



Artwork by Emma Turner  
Rochester City School District

# Consent & Confidentiality for Youth Services

*Approved by the Board of Education and Community Agency Staff*

**Education Records: FERPA**

**Special Education: Individuals with Disabilities Education Act (IDEA)**

**Health Services for Youth**

**Mental Health**

**Substance Abuse**

**Monroe County Department of Human Services: Financial Assistance**

**Monroe County Department of Human Services: Medicaid**

**Monroe County Department of Human Services: Foster Care**

**Monroe County Department of Human Services: Child Protective Services**

**Monroe County Department of Human Services: Preventive Services**

**Runaway and Homeless Youth Services**

**Probation**

**Law Enforcement: Rochester Police Department**

**Other Legal Processes: Emancipation**

**Other Legal Processes: Consents for Children of Incarcerated Parents**

**Other Legal Processes: Immigration**

## Introduction and Overview

This “Resource Guide” addresses the need for school and agency staff to have an accessible, common source of current, accurate information on consents and confidentiality to reference in their daily work of securing and coordinating services for students.

The “Resource Guide” contains confidentiality and consent information from public education and seven of the youth service systems most frequently collaborating with schools and each other to provide services for RCSD students and families: Health, Mental Health, Substance Abuse, Social Services (including public financial and medical assistance programs, Child Protective, Foster Care and Preventive services for families and children), Runaway and Homeless Services, Probation and Law Enforcement.

Service Sections of the “Resource Guide” provide:

- A brief description of each service area and definitions relevant to that service.
- The major provisions for the consent for services in each of the services areas.
- The information deemed confidential for each system and provisions for how and with whom confidential information can be shared.
- Citations of laws and regulations (Federal, New York State, Local) applicable for each service area to show sources of information provided.
- Resources (websites and publications) where additional information can be obtained for each service area.

Additional Sections of the guide provide Information on legal processes that can assist in protecting children and youth or assuring their rights and benefits. These sections describe the general purpose and major elements of each legal process and how these can be utilized to help children and youth.

## Using the Resource Guide

The Resource Guide was designed for school and agency staff working directly with students and families and their supervisors/managers. The major consent and confidentiality provisions for each system can be quickly located and used to inform individual or collaborative work with students. Citations and additional sources of information in each section are included to assist staff in locating more detail or clarity on each system’s requirements.

This publication is intended as a guide to important information school and agency staff need to assure privacy and rights of students and families and their access to needed services and does not provide legal advice.

Legal counsel should be consulted for case specific interpretations, exceptions and situations not referenced in this guide and District or agency policies with regard to consent and confidentiality.

### Acknowledgments

Research for this guide was conducted, reviewed and edited by experts in each of the youth service systems included in the guide. These individuals contributed substantial time and knowledge to content development: Leslie Barnes, Joan Bickweat, Cara Briggs, Donna Hill, Elizabeth Meeker, Merideth Smith, Patti Moss and Joan Vitkus.

The Consent and Confidentiality Design Team, representing RCSD Staff and partner agencies, provided wise advice on the format, content and lay out for the guide. Bridget Baumer, Martha Bottoni, Brian Chaffee, Mary Gagnier, Chennetta Hunter-Stokes, Mary Lou McCloud, Flora McEntee, Lamar Powell, Darlene Sullivan, Teresa Root and Harry Roldan.

Funding for this guide was made possible by the Rochester City School District through the Safe Schools Health Students grant from the U. S. Departments of Education, Health and Human Services, and Justice.

## SERVICE AREA DESCRIPTION:

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student educational records. This law applies to all student records, including those for elementary and secondary students, and contains specific information on what constitutes a student record, how confidential, personally identifiable information is to be protected and the conditions under which student records can be shared with parents, other schools, school systems and agencies.

## Confidentiality Requirements

### **What constitutes a student education record? Which parts of the record are confidential?**

1. Education records are those that directly relate to a student and that are maintained by an educational agency or institution or by a party acting for the educational agency or institution. The education record includes all written documents, electronic files, microfilm and microfiche, video or audio tapes or CDs, films and photographs the educational agency or institution has regarding a student. The student health record is part of his or her education record.
2. Personally identifiable information in education records is confidential and protected.

### **Who gives consent for sharing information?**

1. Parents must give written consent to release an education record for a student under 18.
2. At 18, the right to consent transfers to the student and only the student can consent for release of information.
3. For information on students with disabilities, parent consent or consent of student over age 18 is specifically required before sharing information with residential schools, payers for services and several other organizations.

### **Are there restrictions on what information can be shared and with whom?**

1. A parent decides what information can be released from all education and special education records and to whom it will be released until the student is 18. At 18, only the student, called an eligible student, decides what information can be released from their educational records and to whom.

2. Confidential information, once received, cannot be re-released without consent.

### **Who has access to student files without parent or student consent? Under what circumstances is access allowed?**

1. The School District has discretion to release "Directory Information" to others with legitimate interest provided parents have been given public notice of what information will be released and of their right to request non-release of directory information about their child. (see explanation of Directory Information below)
2. The District can provide access to student educational records without consent in other situations to support legitimate education interests. These situations are specified in FERPA. The District can also provide access to confidential student records for a health or safety emergency.
3. Disclosures of student record information can be made to authorized representatives of state or local education authorities for auditing or evaluating federal or state supported education programs or enforcing federal laws, or to organizations conducting studies for or on behalf of education agencies.

## Consent Requirements

Consent requirements for release of educational records are described above.

### **Applicable Laws and Regulations**

Family Educational Rights and Privacy Act (FERPA): 20 USC. §1232 et seq. Family Educational Rights and Privacy Act Regulations; 34 CFR Part 99

### **Definitions:**

**"eligible student"**—parent rights with regard to their child's education records transfer to the student when he/she reaches age 18 or attends a school beyond high school. Students to whom these rights are transferred are "eligible students."

**"directory information"**—Directory information includes: student name, address, phone number, email, date of birth, dates of attendance, ("dates of attendance" does not mean "daily attendance;" daily attendance is not directory information) grade level, activities, field of study, degrees, honors, schools attended.

### **Resources for additional information:**

U.S. Dept. of Education, Family Policy Compliance Office (FPCO)  
[www.ed.gov/policy/gen/guid/fpco/index.html](http://www.ed.gov/policy/gen/guid/fpco/index.html)

## SERVICE AREA DESCRIPTION:

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) governs how states and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children and youth with disabilities. IDEA provisions for consent and confidentiality apply to students referred for evaluation or reevaluation relating to a disability and for those receiving services through an Individual Educational Plan (IEP).

**NOTE:** The information below focuses only on the school age (age 5-21) sections of IDEA and New York Education Law and the Committee on Special Education (CSE).

### Confidentiality Requirements

#### **What constitutes a student record under IDEA? Which parts of the record are confidential?**

IDEA requires schools to preserve the confidentiality of personally identifiable data, information or records pertaining to students with disabilities. All records pertaining to evaluation or provision of service to students with disabilities are considered "education records" under FERPA and are thus subject to the confidentiality provisions of both FERPA and IDEA.

#### **Who gives consent for sharing information?**

1. Parent (as defined by IDEA) gives written consent for release of information from education and special education records and decides to whom information will be released.
2. The right to consent to release of CSE records transfers to the student at age 18.
3. Parent consent or consent of the student over age 18 is specifically required before sharing information with residential schools, payers for services and several other organizations including: a Family Court Judge, a probation department, a social services district ( Department of Human Services or DHS in Monroe County), the New York State Office of Children and Families(OCFS) or a preadmission certification committee established under Mental Hygiene Law.

#### **Are there restrictions on what information can be shared and with whom?**

Confidential information, once received, cannot be re-released without consent

#### **Who has access to student files without parent or student consent? Under what circumstances is access allowed?**

1. Parents(as defined under IDEA ) have the right to all records and data for their child.
2. School District employees with a legitimate educational interest and members of the CSE with responsibility for referral, evaluation, IEP development, placement and review of services for students with disabilities have access.
3. Regular and special education teachers, and related or other service providers who are responsible for implementing the student's IEP are to have a copy of the IEP and its amendments. "Other service provider" means: representative of another public school district, charter school, BOCES or other school where student receives or will receive IEP services .
4. Disclosures can be made to authorized representatives of state or local education authorities for auditing or evaluating federal or state supported education programs or enforcing relevant federal laws, or to organizations conducting studies for or on behalf of education agencies.
5. Parental consent is required before personally identifiable information may be disclosed to parties, other than officials of participating agencies, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA.

### Consent Requirements

#### **Who consents to services for student?**

1. Parent consents for special education services for the student.
2. IDEA gives guidance on who can consent when parent is not available or able to consent. (See definition of parent and surrogate parent information below)

#### **When can a student consent for services?**

Minors cannot consent for services under IDEA. New York State has chosen not to transfer the right to consent for service to students at

*(continued on next page)*

age 18, even though IDEA gives states the discretion to do so.

### **Who cannot consent?**

Consent is not permitted by:

1. A public agency that provides education or care for a student or a private agency that contracts with a public agency to provide care or education for the student.
2. A foster parent. (A foster parent who has been appointed as a surrogate for the student can consent.)
3. An unaccompanied homeless youth cannot consent but must have a surrogate provide consent for him/her to have an initial evaluation. An employee of a temporary housing facility operated by a local social service district or runaway/homeless youth shelter may consent until a surrogate is appointed.
4. A school where a child resides as a ward of the state.

While consenting to evaluation and services under IDEA is limited to parents, those acting as parents, or surrogates, others can make or request referrals for initial evaluation in the interest of the child.

### **When is no consent needed to access services for child?**

1. At reevaluation if school has made reasonable efforts to obtain consent and parents failed to respond.
2. Before reviewing existing data as part of an evaluation or reevaluation.

### **Applicable Laws and Regulations:**

Individuals with Disabilities Education Act (IDEA); Pub. L. 108-446; 20 USC. §1400 et seq.

IDEA Regulations: 34: Code of Federal Regulations (CFR) §300.

NY Ed Law; Ed Law, Article 89, §4001 et seq.

NY Ed Regulations; 8 NYCRR §200 et seq.

Family Educational and Rights and Privacy Act (FERPA): 20 USC.

§1232 et seq.

FERPA Regulations: 34 CFR Part 99

### **Definitions:**

**“parent”**—under IDEA, parent means a natural or adoptive parent, a legally appointed guardian, a person in parental relationship to a child ( grandparent, step-parent, guardian, custodian who is either presumed to act as parent because of the death, imprisonment, absence of parent, or has been designated in parental relationship by parent) or an individual assigned as a surrogate parent.

**“surrogate parent”**—an individual appointed by the school district to represent and protect the interests of a child in IDEA (CSE) matters when no parent is available.

**“ward of the state”**—this term refers to children and youth who are placed by Family Court with either the DHS for family foster care, residential or group care on Child Protective Services (CPS), Person in Need of Supervision (PINS) or Juvenile Delinquency (JD) matters or with the Office of Children and Family Services (OCFS) for JD placement.

**“informed consent”**—means that (1) the parent has been fully informed of all information relevant to the activity for which consent is sought, has been notified which student records will be released and to whom they will be released; (2) the parent understands and agrees in writing to the activity for which consent is sought; and (3) the parent is made aware that the consent is voluntary and can be revoked at any time but revocation is not retroactive.

**“personally identifiable information”**—means name of student, their parent or other family member, student address, personal identifier such as Social Security Number or student number , personal characteristics or other information that would identify the student.

### **Resources for additional information:**

NYS Education Department Special Education website:

[www.p12.nysed.gov/specialed/](http://www.p12.nysed.gov/specialed/)

## SERVICE AREA DESCRIPTION

Consent for minors to receive medical, dental, health and hospital services.

## Confidentiality Requirements

### **What constitutes a patient record? Which parts of the record are confidential?**

1. The health care record is all information on the admission, status, care and treatment of patients.
2. All information is confidential.
3. Confidentiality provisions for Reproductive Health Care, Sexually Transmitted Diseases (STDs) and HIV minors are separate and described in the next sections of this Guide.

### **Are there restrictions on what information can be shared and with whom?**

1. Parent or youth over 18 decides what is to be shared.
2. School Health records are covered by the Family Educational Rights and Privacy Act (FERPA).

### **Who gives consent for sharing information?**

1. For general health care, a parent gives consent if youth under 18; youth consents at 18 or over.
2. A minor who is a parent or married can consent.

### **Who has access to minor medical files without parent or minor consent? Under what circumstances is access allowed?**

1. Minor medical information can be accessed in an emergency.
2. Medical information can be released by court order or subpoena.
3. School officials can access under certain situations.
4. Certain State and local officials, and educational agencies have access by statute.

## Consent Requirements

### **Who consents to services for student?**

1. Parent consents for medical treatment of child under 18.
2. Youth 18 or older consents for medical services.

### **When can a student consent for services?**

- A. Minors can consent at any age if married or a parent.
- B. Any pregnant youth can consent for prenatal services.

### **Who cannot consent?**

Consent is not permitted by a minor under 18, or anyone else, except if married, a parent, or pregnant.

### **When is no consent needed to access medical services for a minor?**

Consent is not needed if doctor determines: an emergency exists and; minor is in need of immediate medical care; and a delay in treatment to obtain consent would be harmful to the patient.

### **Applicable Laws and Regulations:**

N Y Public Health Law §2504  
General Obligations Law §5-1551  
FERPA 20 USC 1239(g);  
34 CFR Part 99

### **Definitions:**

**“School Health Services”**—include medical examinations, dental inspection and/or screening, scoliosis screening, vision screening and audiometer tests, designed to determine the health status of the student; to inform parents, students, and school personnel of student’s health condition subject to Federal and State confidentiality laws; to guide parents, students and teachers in preventing illness and disease; to assist in case of accident or illness; to make recommendations concerning the health and safety aspects of school facilities and the provision of health information.

**“Persons in parental relation”**—a written designation by parent that someone else may serve as a “person in parental relation.” There are specific requirements regarding form of designation and length of designation.

### **Resources for additional information**

N Y Statewide School Health Services Center  
[www.schoolhealthservices.com](http://www.schoolhealthservices.com)  
NYS Department of Health:  
[www.health.ny.gov/community](http://www.health.ny.gov/community)

## SERVICE AREA DESCRIPTION

Reproductive Health Care, also known as “Family Planning Services” includes contraceptive care and counseling, emergency contraception, pregnancy tests and options counseling and abortion. These services are available to minors in New York State through their pediatrician or primary care physician, health centers and specialized teen clinics.

## Confidentiality Requirements

### Confidential Information and Service Record Definitions

1. The health care record is all information on the admission, status, care and treatment of patients.
2. All information is confidential.

### ***Who can give consent for release of confidential reproductive health care information on a minor?***

Confidential health care for adolescents, including reproductive health care, means a provider may generally not disclose medical records to anyone, including parents, without the adolescent patient’s consent.

### ***What are provisions for securing consent and re-release of information?***

1. Only the minor patient can give consent for release and re-release of confidential medical information.
2. Informed consent from a minor patient is required for release of confidential medical information.

### ***What information can be released without consent? To whom may/must such information be released?***

1. No release is permitted without patient consent.
2. Confidentiality requirements for minors must also be strictly preserved from the risk of involuntary or inadvertent disclosure to parents or others. Service billing, payment and record keeping are areas where breach of confidentiality could occur and be detrimental to the minor.

## Consent Requirements

### ***Who can consent for youth?***

1. In New York State, a minor under 18 can consent to confidential family planning services. A minor can obtain these services without parental notification or consent.
2. A pregnant minor can consent to prenatal services and to labor and delivery.
3. A minor parent can consent for his/her own medical services and to medical services for the child.
4. An minor in foster care can consent to confidential family planning services like any other minor.

### **Applicable Laws and Regulations:**

42 USC 300  
42 CFR Part 59

### **Definitions:**

**“family planning services”**—also known as reproductive health, includes the following services: contraceptive care and counseling; emergency contraception; pregnancy testing and options counseling; abortion services.

**“informed consent”**—A minor who understands the risks, benefits and proposed alternatives to certain health services and who is free from fraud, duress or any other type of force, may give informed consent. Informed consent may be verbal or written and should be noted in the patient record.

### **Resources for additional information:**

New York State Department of Health Family Planning Services  
[www.health.ny.gov/community/pregnancy/family\\_planning](http://www.health.ny.gov/community/pregnancy/family_planning)

## SERVICE AREA DESCRIPTION

The testing and treatment of minors for Sexually Transmitted Diseases (STDs) is an area where parental consent is not necessary.

## Confidentiality Requirements

### Confidential Information and Service Record Definitions:

1. The record is all information regarding STD testing and treatment of the patient.
2. All reports or information relating to STD testing and treatment are confidential.

### **Who can give consent for release of confidential information on a minor?**

Waiver of confidentiality occurs when patient voluntarily discloses or consents to disclose. If a minor lacks capacity to consent to waiver, a parent or law guardian can consent to release information.

### **What are provisions for securing consent and re-release of information?**

Any disclosure ordered by court shall specify that no identification be made of any person besides the subject.

### **What information can be released without consent? To whom may/must such information be released?**

1. Confidential STD information can be released by Court Order in Criminal proceedings.
2. Confidential STD information can be released by Court Order in Article 10 Family Court proceedings.
3. Confidential STD information can be released by court order in other limited proceedings.

## Consent Requirements

### **Who can consent for a minor?**

1. For STD testing by licensed or staff physician: any person under 21 can consent for him/herself.
2. For STD treatment by licensed or staff physician: any person under 21 can consent for him/herself.

### **Who cannot consent for a minor?**

Anyone besides the minor or parent/guardian.

### **Can a minor refuse to be tested for an STD?**

Unless the test is deemed “emergency treatment” if a minor refuses consent, he/she generally can’t be tested. In certain instances, the local health director could seek a court order requesting STD testing.

### **Applicable Laws and Regulations**

NYS: Public Health Law Article 23

NYS: 10 NYCRR Part 23

### **Definitions:**

The term “**sexually transmitted disease**” is used to cover the many infectious organisms that are spread through sexual activities. The current Sexually Transmissible Disease list, as promulgated by the New York State Department of Public Health is available on the NYS Department of Health website.

### **Resources for additional information:**

NYS Department of Health  
[www.health.state.ny.us/diseases](http://www.health.state.ny.us/diseases)



## SERVICE AREA DESCRIPTION

HIV testing is available to an individual (child, youth, adult) to determine if they are infected with the HIV virus. Treatment is available if infection is found. Confidential HIV testing and treatment are provided through physicians, health practices and clinics. Anonymous testing must be provided to anyone who requests it. An individual cannot be tested for HIV without written informed consent from the subject who has capacity to consent or, if they lack capacity, the person authorized by law to consent.

## Confidentiality Requirements

### Confidential Information and Service Record Definitions:

Confidential HIV-related information is any information in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV-related information, concerning whether an individual has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts.

### Who can give consent for release of confidential information on a minor?

1. The protected minor, or the person authorized to consent for them if they don't have capacity, must give informed consent for the release of confidential HIV-related information.
2. Or, the release of information must conform with the permitted or required releases of information specified in State Law ( see below).

### What are provisions for securing consent and re-release of information?

1. Consent must be informed, in writing, and specific to the release of the confidential HIV information. A general release of medical information is not sufficient.
2. Confidential HIV-related information cannot be redisclosed except with consent of the individual or as permitted by law.

### What information can be released without consent? To whom may/must such information be released?

NYS Public Health Law lists a number of purposes, individuals, organizations and situations when and to whom confidential HIV-related information may or is required to be released without consent of the individual (PHL §2782 enumerates all such disclosures). Some of these permitted or required releases are:

1. To health providers and facilities that are treating the individual.
2. To federal, state and local health officers for public health purposes/disease control.
3. Pursuant to a Court order for release of the information.
4. To parole, probation or correctional officials.
5. To a law guardian to aid in representing a minor's interests.
6. To insurers or their agents to authorize treatment payments.
7. To authorized agencies caring for a minor in foster care.

## Consent Requirements

### Who can consent for a minor?

#### For HIV Testing:

1. Parent or other person authorized by law to consent if the child lacks capacity to consent.
2. A minor under age 18 has the right to consent-or to refuse- confidential HIV testing without parent involvement. The minor's informed consent must be in writing and he/she must be informed that positive test results will be reported to the Department of Health.

#### For HIV Treatment:

Usually parent consent would be needed for treatment of a minor. In emergencies, or cases where parental involvement is impossible or could cause harm, a minor who has capacity to consent and can adhere to treatment can consent to treatment.

### Who cannot consent for a minor?

No one other than parent, person authorized to consent or minor with capacity can consent.

### Consent Exceptions and Special Requirements:

1. When a minor consents on his/her own to confidential HIV testing, the law does not require or permit parental notification without the minor's consent, except in extraordinary circumstances.
2. A minor is also entitled to anonymous testing where the patient's name is not revealed and test results cannot be traced to an individual.

### Applicable Laws and Regulations:

NYS Public Health Law ( PHL): §§ 2780-2787  
NYS Codes, Rules, Regulations: 10 NYCRR 63

### Definitions:

**"AIDS"**—acquired immune deficiency syndrome, as may be defined from time to time by the Centers for Disease Control.

**"HIV infection"**—infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

**"HIV related test"**—any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

**"capacity to consent"**—an individual's ability, determined without regard to the individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment, or procedure, or of a proposed disclosure of confidential HIV related information, as the case may be, and to make an informed decision concerning the service, treatment, procedure or disclosure.

**"protected individual"**—a person who is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness.

### Resources for additional information:

NYS Department of Health AIDS Institute  
[www.health.state.ny.us/diseases/aids](http://www.health.state.ny.us/diseases/aids)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) sets federal requirements for the privacy of individual medical records and health information. This summary is intended to provide a general overview of HIPAA requirements regarding privacy and confidentiality of health information, so that educators and youth workers have information on the purposes and major requirements of this important law and can both understand and support HIPAA goals. ***This summary is not a complete or comprehensive guide or source for HIPAA compliance and should not be used as a source of HIPAA compliance, legal information or advice.***

Health care systems and providers have already interpreted and applied HIPAA privacy requirements to their systems, programs, and practices. These are incorporated in the confidentiality requirements for each system described in this reference guide. It is especially important to know and comply with the confidentiality/privacy requirements of each service system since some of these are more stringent than HIPAA, as is allowed by law.

#### **Purpose/Description:**

The Standards for Privacy of Individually Identifiable Information—commonly called “Privacy Rule”—addresses the use and disclosure of individual health information, called “protected health information,” by organizations subject to the Privacy rule. Such organizations are called “covered entities.” Standards are also set for individuals to understand and control how their health information is used. The Privacy Rule has a dual goal: to assure that individual health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well being.

#### **Applicable Laws and Regulations:**

Health Insurance Portability and Accountability Act of 1996, PL 104-91: §§ 261-264.

Standards for Privacy of Individually Identifiable Health Information (Privacy Rule): 45 CFR, Parts 160-164.

#### **General Principles for Uses and Disclosures of Protected Health Information**

- **Basic Principle of HIPAA:** A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual’s personal representative) authorizes in writing.
- **Required Disclosure:** A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to the federal Health and Human Services

agency when it is undertaking a compliance investigation, review or enforcement action.

- **Minimum Necessary.** A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request.

#### **Permitted Uses and Disclosures and Authorized Uses and Disclosures**

- **A covered entity is permitted, but not required, to use and disclose protected health information, without an individual’s authorization, for several specified purposes and situations.** These situations are specified in HIPAA and related regulations. Covered entities may rely on professional ethics and best judgment in deciding which of these permissive uses and disclosures to make.
- A covered entity must obtain the individual’s **written authorization** for any use or disclosure of protected health information that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule. All authorizations must be in plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration of the authorization and right to revoke in writing.

#### **Minors and Personal representatives**

**Minors.** In most cases, parents are the personal representatives for their minor children and can access their medical records. When the parent is not considered the personal representative, the Privacy Rule defers to State and other laws to determine the rights of parents to access and control the protected health information of their minor children. If State and other laws are silent concerning parental access to the minor’s protected health information, a covered entity has discretion to provide or deny a parent access to the minor’s health information, provided the decision is made by a licensed health care professional in the exercise of professional judgment.

**Personal Representatives.** A “personal representative” is the same as the individual, with respect to uses and disclosures of the individual’s protected health information, as well as the individual’s rights under HIPAA. A personal representative is a person legally authorized to make health care decisions on an individual’s behalf. A personal representative may be denied access to an individual’s information when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual.

#### **Resources for additional information:**

US Department of Health and Human Services,  
Office of Civil Rights, [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)

## SERVICE AREA DESCRIPTION

Mental Health Services are provided to evaluate, diagnose and treat a variety of conditions that impair a youth's normal cognitive, behavioral and emotional functions. Services are provided by licensed and other authorized individuals (psychiatrists, psychologists, social workers and counselors) qualified by training and experience. Mental health services are provided in a variety of outpatient and inpatient settings.

## Confidentiality Requirements

### **What constitutes a clinical record? Which parts of the record are confidential?**

1. The mental health record is all information regarding the admission, status, care and treatment of clients.
2. All mental health information is confidential.

### **Are there restrictions on what information can be shared and with whom?**

1. Information disclosed is limited to what is necessary in light of the reason for disclosure.
2. Disclosure is made to those with demonstrable need and where disclosure is not detrimental to the client, others or the public.
3. No re-release of confidential mental health information is permitted.

### **Who gives consent for sharing information?**

The client or someone acting on his or her behalf (parent or guardian) must give, written, informed consent.

### **Who has access to client mental health files without parent or client consent? Under what circumstances is access allowed?**

1. The State Office of Mental Health (OMH) Commissioner can release information to qualified researchers for approved research studies provided client identity is not disclosed.
2. The OMH Commissioner can also release information to certain entities and persons to prevent imminent, serious harm to the client, to others or the public.
3. State Mental Hygiene Law (MH.33.13) and HIPAA should be consulted for information on other entities having access to client files without client or parent consent.

## Consent Requirements

### **Who consents to services for a minor?**

The parent or legal guardian consents for mental health services for a minor.

### **When can a minor consent for services?**

A mental health practitioner may provide outpatient services to a minor without parent or guardian consent if the practitioner determines:

- The minor is knowingly and voluntarily seeking services, and
- Provision of such services is clinically indicated and necessary to the minor's well-being, and
- A parent or guardian is not reasonably available, or
- Requiring parent or guardian consent would be detrimental to the course of outpatient treatment, or
- A parent or guardian has refused to consent and a physician determines treatment is necessary and in the best interest of the minor.
- The minor provides written, informed consent for treatment and practitioner documents decision to provide services to the minor.
- A mental health practitioner may provide a minor voluntarily seeking outpatient services with an initial interview without parent or guardian consent or involvement to determine whether the criteria for minor consent are present.

### **Who cannot consent?**

Consent is not permitted from anyone except parent, legal guardian or minor themselves under conditions specified by Mental Hygiene Law.

### **When is no consent needed to access services for child?**

Consent is not needed to provide a minor voluntarily seeking outpatient services with one initial interview without parent or legal guardian consent or involvement to determine if conditions for minor consent are present.

### **Applicable Laws and Regulations:**

NYS Mental Hygiene Law: §33.13 ( confidentiality), §33.21 (consent)  
Code of Federal Regulation: 45 CFR, Parts 160-164

**Note:** Federal HIPAA requirements may apply to certain mental health providers. Depending on the issues, HIPAA may preempt NYS Mental Hygiene Law. Both HIPAA and NYS MHL should be consulted.

### **Definitions:**

**"minor"**—under mental health law, a minor is defined as a person less than 18 years of age, but does not include a person who is a parent, emancipated or married.

**"capacity to consent"**—minor's ability to understand and appreciate the nature and consequences of the proposed treatment, the benefits and risks thereof, and alternatives to such treatment and to reach an informed decision.

### **Resources for additional information:**

[www.omh.state.ny.us](http://www.omh.state.ny.us)

## SERVICE AREA DESCRIPTION

Services in this area are provided for the prevention of substance abuse and the evaluation, treatment and rehabilitation of youth who abuse or are dependent on alcohol and/or other substances. Services are provided by licensed or certified practitioners qualified by training and experience. Substance abuse services are available in a variety of community based and clinical outpatient and inpatient settings.

## Confidentiality Requirements

### **What constitutes a clinical record? Which parts of the record are confidential?**

1. The clinical record is any information, recorded or not, received or acquired by a drug or alcohol evaluation, treatment or prevention program.
2. All information in the clinical record is confidential.

### **Are there restrictions on what information can be shared and with whom?**

1. Information disclosed is limited to what is necessary in light of the reason for disclosure.
2. The client decides what will be disclosed and to whom.
3. Re-disclosure of client information is not permitted.

### **Who gives consent for sharing information?**

1. Parent or legal guardian of a minor must give written, informed consent for sharing information.
2. A minor must consent to share information with his or her parent.
3. Any answer to a request for a disclosure of client's substance abuse record which is not permissible must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse.

### **Who has access to client files without parent or client consent? Under what circumstances is access allowed?**

1. Substance abuse service regulations make provisions for access to service records for research, evaluation and auditing activities but client identity cannot be disclosed or revealed in these activities.
2. Substance abuse service regulations should be consulted for information on other entities having access to client files without client or parent consent.

## Consent Requirements

### **Who consents to services for minor client?**

Parent or legal guardian consents to inpatient, outpatient or residential treatment of a minor for substance abuse.

### **When can a minor consent for services?**

Minors can consent to substance abuse services without parent or

legal guardian consent when:

- The minor is knowingly and voluntarily seeking services, and
- A physician, staff under supervision of a physician, or qualified health professional determines that parent or legal guardian involvement would have a detrimental effect on the treatment of a minor voluntarily seeking treatment, or
- A parent or legal guardian refuses to consent to such treatment and the physician believes such treatment is in the best interest of the minor, or
- If a provider of services cannot locate the parent or legal guardian of a minor voluntarily seeking treatment after employing reasonable measures, or the parent or guardian refuses or fails to communicate with the provider within a reasonable time about the minor's treatment.
- The minor provides written informed consent for services and the provider documents the decision to provide services.

### **Who cannot consent?**

Consent is not permitted by anyone except a parent, legal guardian or the minor under conditions specified in New York State Mental Hygiene Law.

### **When is no consent needed to access services for child?**

Consent from parent, legal guardian, or minor is always needed for treatment/services.

### **Applicable Laws and Regulations:**

NYS Mental Hygiene Law: § 22.11 (consent)

Code Federal Regulations: 42 CFR 2 ( confidentiality)

Code Federal Regulations: 45 CFR, Parts 160-164

**Note:** Federal HIPAA requirements may apply to certain substance abuse providers. Depending on the issue, HIPAA may preempt State Substance abuse law. Both HIPAA and State substance abuse laws should be consulted.

### **Definitions:**

**"minor"**—under mental hygiene law for alcohol and substance abuse services, a minor is a person under 18 years of age, but does not include a person who is married, has a child or is emancipated.

**"chemical dependency"**—describes psychological and physical addiction to mind and mood altering substances such as alcohol, cocaine, marijuana.

**"qualified health professional"**—an individual who is licensed to practice a health care profession by the State of New York. These include: physicians, registered professional nurses, nurse practitioners, physician assistants, among others.

### **Resources for additional information:**

[www.oasas.state.ny.us](http://www.oasas.state.ny.us)

[www.samhsa.gov](http://www.samhsa.gov)

## SERVICE AREA DESCRIPTION

Temporary financial help is available in New York State for needy men, women and children who are unable to work, can't find a job or where a job does not pay enough to meet basic needs of the individual or family. All financial assistance programs, sometimes called "public assistance" or "welfare", are intended to be short term in nature, assure that basic needs are met and promote employment and self sufficiency. Each program has eligibility requirements that must be met. Programs are: Temporary Assistance for Needy Families (TANF), known as Family Assistance in New York State; Safety Net Assistance, Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps), Emergency Assistance which includes Homeless/Housing Assistance and Home Energy Assistance (HEAP). Applications for financial assistance programs are made through the local social services district (Department of Human Services (DHS) in Monroe County).

## Confidentiality Requirements

### **What constitutes a temporary assistance record? Which parts of the record are confidential?**

1. Temporary assistance records include the names and addresses of applicants, recipients and their relatives, including lists thereof and all records, information, reports, investigations, correspondence, financial reports and reports of medical exams, tests and treatments of clients whether in the written record or in an electronic database.
2. All temporary assistance information is confidential.
3. Applicant and recipient information regarding domestic violence is further safeguarded by law.

### **Are there restrictions on what information can be shared and with whom?**

1. The New York State Social Services Law and that statute's related regulations determine what case record information may be shared and with whom.
2. There are limits on the information and circumstances when client identifying information can be released to the public.
3. Information released may only be used for the purposes for which it was made available and these purposes need to be related to public assistance purposes and the function of the inquiring agency.
4. The confidentiality of information received must be maintained by the person or agency receiving it.
5. Confidential temporary assistance information cannot be used for commercial or political purposes.

### **Who gives consent for sharing information?**

The New York State Social Services Law and that statute's related regulations determine who may release case record information. In certain circumstances the applicant or recipient's wishes must be determined before information may be released. There are also some circumstances under which the applicant or recipient's consent is not required.

### **Who has access to temporary assistance files without applicant or recipient consent? Under what circumstances is access allowed?**

Access to temporary assistance files is controlled by the New York State Social Services Law and that statute's related regulations, which do not make applicant/recipient consent the major determining factor in access. The law and regulations are very stringent however, and allow access in very limited circumstances.

1. DHS can release some client information to the public, but this is limited by statute.
2. DHS can release certain client information to a person, public official, or agency from whom the client is requesting services.
3. DHS can also disclose applicant or recipient information to certain other parties. These include specific federal, state and local officials, law enforcement under certain circumstances, grand juries, immigration authorities, funders, auditors, and evaluators.
4. Although DHS personnel may have access to an applicant/recipient's file, that access is only permissible for the purposes of performing that person's job at DHS.

## Consent Requirements

### **Who consents to temporary assistance services for child or youth?**

1. A parent of a child up to 18 years, or 19 if the child is still in secondary school, and living with the parent can apply and consent for the child.
2. A relative, caretaker or other person interested in or concerned for the welfare of a child can apply for, consent and receive temporary assistance benefits for a child or youth.
3. If an individual for good reason cannot apply in person for temporary assistance, they can designate in writing someone to apply for them.

### **When can a minor consent for temporary assistance services?**

A minor 16 and over can apply for and consent to temporary assistance benefits. TANF (federal law) limits when a youth 16 or 17 can receive temporary assistance for his or herself without adult supervision.

### **When is no consent needed to access services for a minor child or youth?**

See above for several other individuals who can apply for and receive financial assistance benefits on behalf of a child or youth.

### **Applicable Laws and Regulations:**

NYS Social Service Law (SSL): §§ 131,136,349,350, 367, 369  
NYS Codes, Rules, Regulations (NYCRR): 18NYCRR §§ 357  
(Note: citations are for consents and confidentiality information re temporary assistance programs only; numerous state and federal laws and regulations govern other aspects of these several programs)

### **Definitions:**

**"family assistance (FA)"**—provides temporary cash assistance to needy families that include a minor child living with a parent.

**"safety net assistance (SNA)"**—provides temporary financial assistance for individuals and families who are not eligible for FA. These include: single adults, childless couples, families of people abusing drugs and refusing treatment, and eligible aliens.

**"home energy assistance program (HEAP)"**—assists eligible households in meeting their home energy needs. Funds are usually available once per year per family to help with heating costs.

**"supplemental nutrition assistant program (SNAP)"**—monthly benefits that can be used to purchase food at authorized retail food stores. SNAP benefits help low-income working people, senior citizens, the disabled and others feed their families.

**"emergency assistance"**—families and individuals who experience an emergency (no food, no fuel, eviction, homeless, domestic violence) can apply for immediate help from DHS. Financial help received can include shelter placements, energy bill payments and emergency food stamps.

### **Resources for additional information**

New York State Office of Temporary and Disability Assistance:  
[www.otda.ny.gov](http://www.otda.ny.gov)

## SERVICE AREA DESCRIPTION

The Medical Assistance For Needy Persons (“Medicaid” or “MA”) program pays for health and medical care for individuals, families and children who cannot afford these services. Eligibility for Medicaid is determined by specific income, resource, age and/or disability requirements established by New York State (NYS). Eligibility requirements for pregnant women and children are less stringent (higher income limits, no resource limits) to assure these vulnerable populations receive necessary care.

NYS also provides several other programs to assist low income children and families with medical care costs. These include Child Health Plus, Family Health Plus, Family Health Plus Premium Assistance Program, Medicaid Buy-In Program for Working People with Disabilities, and Family Planning Benefits. The local social services district (Department of Human Services (DHS) in Monroe County) provides information and applications for all of these programs except for Child Health Plus. Child Health Plus applications can be obtained from Excellus Blue Cross/Blue Shield at **800-650-4359** or Fidelis at **383-8104** or **866-581-8603**.

## Confidentiality Requirements

### **What constitutes a Medicaid record? Which parts of the record are confidential?**

1. Records for Medicaid and all other DHS programs consist of all information obtained on the client and maintained in the case record file or electronic database.
2. DHS Medicaid program records are confidential subject to both The Health Insurance Portability and Accountability Act (HIPAA) and the New York State Social Services Law and that statute’s related regulations.

**Note:** See the HIPAA section of this guide for a brief overview of the purposes and provisions of this law and its related regulations.

### **Are there restrictions on what information can be shared and with whom?**

Medicaid records are subject to the confidentiality restrictions of both HIPAA and the New York State Social Services Law and that statute’s related regulations.

### **Who gives consent for sharing information?**

Medicaid records are subject to the consent requirements of both HIPAA and the New York State Social Services Law and that statute’s related regulations.

### **Who has access to medical assistance files without parent or minor consent? Under what circumstances is access allowed?**

HIPAA and the New York State Social Services Law and that statute’s related regulations specify provisions for access to Medicaid records without parent or minor consent.

## Consent Requirements

### **Who consents to services for minor child or youth?**

1. Parent, relative, caretaker and others can apply and consent for Medicaid or Child Health benefits for a child or youth.
2. A child or youth whose family is on Temporary Assistance (Family Assistance or Safety Net) receives Medicaid as part of that assistance.
3. A child or youth living with a relative or caretaker on Temporary Assistance can apply for and receive Medicaid as part of that assistance.
4. Children and youth under 21 who are in foster care or receiving disability benefits (SSI) are eligible for and receive Medicaid to cover their health care needs.

### **When can a minor consent for services?**

1. Minor under 21 can apply for and consent to receive Medicaid to cover the medical costs of pregnancy and childbirth.
2. Minor under 21 not residing with a parent, guardian or caretaker can apply for and consent to receive Medicaid.
3. Minor under 21 can apply for and consent to receive Medicaid or Child Health benefits for their own minor child.

### **When is no consent needed to access benefits for a child or youth?**

See above for several other individuals who can apply for benefits on behalf of a child/youth.

### **Applicable Laws and Regulations:**

NYS Social Services Law (SSL): SSL§ 366 (consents/applications)  
Health Insurance Portability and Accountability Act (PL 104-191) HIPAA (confidentiality)  
Code of Federal Regulations (CFR): 45 CFR 160-164. (confidentiality)  
New York Social Services Law § 136,  
18 New York Code of Rules and Regulations 357

### **Definitions:**

**“child health plus (CHP)”**—health insurance program for low income children under age 19 who are not eligible for Medicaid.

**“family health plus (FHP)”**—health insurance program for adults who are aged 19 to 64 who have income or resources too high to qualify for Medicaid.

**“family health plus (FHP) premium assistance”**—this program requires low income working persons who are eligible for FHP to enroll in an employer-sponsored health insurance program if such an employer plan is accessible to the employee, qualified (provides a defined minimum level of coverage) and cost effective. FHP then pays the employee share of the employer insurance program premium.

**“family planning benefit”**—covers costs for low income individuals who need family planning services.

**“federal poverty level (FPL)”**—these are income thresholds that vary by size and composition of family and are used to establish a common basis for financial eligibility for federal assistance programs.

**“medicaid buy-in program for people with disabilities”**—offers Medicaid coverage to people with disabilities who are working and earning more than the allowable limits for regular Medicaid by paying a modest premium based on their income to retain their Medicaid insurance.

### **Resources for additional information**

[www.nysegov.com/map-NY.cfm](http://www.nysegov.com/map-NY.cfm) (click on health)  
[www.health.ny.gov/](http://www.health.ny.gov/)

## SERVICE AREA DESCRIPTION

Foster Care is an out of home placement of a child ordered and authorized by Family Court to provide safety and services for abused and/or neglected children (Child Protective Services), for Persons In Need of Supervision (PINS) and Juvenile Delinquents, for destitute or abandoned children or when a family cannot care for their child and voluntarily places a child in foster care.

### How Children Enter Foster Care

In foster care situations, children are placed by the Court in the care and custody of the local DSS (Department of Human Services or DHS in Monroe County) who then places the children in certified foster family care homes, or in State authorized group or residential facilities. DHS is charged with reuniting the family, providing or arranging services and support for family and child with the goal of aiding the family to become able and competent to care for the child.

In some instances parents will surrender their rights to a child or the Court will terminate their parental rights to a child because of abuse, neglect or abandonment issues that are not resolved. In these instances DHS becomes the child's legal guardian until adoption or the child reaches independence at age 18.

### How Children Leave Foster Care

Children leave care in a variety of ways. Most are discharged because the parent has completed the conditions of their court order or the judge determines the parents are making enough progress that the child is safe to return home. Children placed on a PINS or JD order often leave placement because the terms of their court order have expired, they have met the conditions outlined in the court order or the judge decides that sending the child back home with terms and conditions will allow for a child's safe return. Some children leave foster care because their adoption was finalized; some children AWOL and then return to care.

Children leaving care after the age of 16 who have been in DHS foster care for at least 12 months can connect with the DHS Youth Opportunity Unit (585 274-6800) for help once they are home or with a relative/caretaker or find themselves homeless. Upon discharge they are provided with a copy of their birth certificate, social security card, and photo I.D. Between the ages of 18 and to 21, the young adult who has been in foster care is eligible for Medicaid until their 21st birthday, even though they are not in foster care. They must live in NY State. Monroe County's foster care clinic, Starlight Pediatrics, works with any child leaving foster care to ensure they have a new medical home, will forward records, and provide medical information to receiving physicians, parents and teens.

## Confidentiality Requirements

### **What constitutes a foster care record? Which parts of the record are confidential?**

1. Foster Care records are all of the information that DHS, the New York State Office of Children and Family Services (OCFS) or any authorized agency caring for a child in foster care has, whether in the official written and electronic record or not. Foster Care record requirements are extensive and specific. The contents of these records include descriptive, legal and evaluative information on the family and child.
2. All foster care records are confidential.

### **Are there restrictions on what information can be shared and with whom?**

1. Foster Care statutes and regulations specifically limit the information that can be shared with various parties: foster parents, adoptive parents, former foster children, relatives who are caring for a child and parents upon the discharge of their child from foster care. The type and scope of information that can be released to each of these parties varies and release of information should not be made without full knowledge of release provisions for each party.
2. Foster Care information cannot be re-released without DHS, OCFS or judicial permission.

### **Who gives consent for sharing foster care information?**

1. DHS, OCFS and judges can authorize release of certain foster care information.
2. DHS can share certain foster care information to arrange services for a child in foster care or his or her family.
3. For children in foster care and their families receiving DHS Preventive Services, the parent or child with capacity must consent to share information from their preventive services record.

### **Who has access to foster care files without parent or student consent? Under what circumstances is access allowed?**

1. Access to foster care information is limited to certain information, individuals and agencies. For example, foster children discharged from care must be provided their own comprehensive health history and education record and their parents' comprehensive health history; the health history of a foster child and his/her parents is available to foster parents and prospective adoptive parents; a former foster child has access to much of their record. Other circumstances for release without consent are specified in statute.
2. State OCFS has access to all and any part of foster care records.
3. Researchers can have access to foster care information but not to client identifiable information unless absolutely necessary to research and approved by OCFS.
4. State Controllers and county auditors may have access to foster care information for performance reviews but there are strict guidelines regarding access to client information and prohibition against release of such information.

## Consent Requirements

### **Who consents to foster care placement for a minor?**

1. Parent consents to voluntarily place a child in foster care.
2. Foster care placements for child protection, juvenile delinquency or PINS are made by Family Court without parent consent.

### **When can a child or youth consent to foster care placement?**

A destitute minor (where there is no parent, legally responsible relative or guardian) can request and consent to be taken into foster care.

### **Who consents for services while a minor is in foster care placement?**

1. The parent provides consent for services for a child in foster care. In all foster care cases the DHS case manager is responsible for securing necessary consents from the parents or the courts if the parent can't or won't consent.
2. Regarding school enrollment when a child is in DHS foster care and attending public schools, the foster parent physically takes the child to school and registers him or her with information provided by DHS. DHS is responsible for the enrollment and securing consents from parents.

3. The DHS worker must secure parent consent for any services beyond those routinely provided by the school; NOTE EXCEPTION BELOW FOR CSE. Any school services that would not require parental consent would not require DHS consent or parental consent when a child is in foster care.
4. Foster parents can consent to emergency medical treatment/ care of child; otherwise DHS must secure parent consent. Foster parents cannot consent to anything that would require parental consent.
5. When a child or youth is in foster care, but placed with an authorized agency for care and treatment (e.g. St Joseph's Villa, Hillside, and Crestwood), the DHS caseworker for the child must secure parent consents for services.
6. When foster children are freed for adoption, DHS provides consent. NOTE EXCEPTION BELOW FOR CSE.

#### **Who cannot consent?**

1. A foster parent can consent only for emergency medical care/ treatment for a child in foster care.
2. Under the Individuals with Disabilities Education Act (IDEA), DHS is prohibited from providing consent for the Committee on Special Education (CSE) for children who are wards of the state, which includes foster care. If there is no other individual who meets the definition of parent, a surrogate parent must be appointed by the School District for CSE purposes.

#### **When is no consent needed to access services for child?**

1. Parental consent for entry to foster care is not needed for non voluntary Court placement: child protective, juvenile delinquency or PINS.
2. Services to students in schools that do not require parental consent do not require DHS worker consent either.

#### **Applicable Laws and Regulations:**

NYS Social Services Law (SSL): §§: 136, 358a, 371-391, 406-408, 409-409a, 422

NYS Family Court Act (FCA): Article 3( Juvenile Delinquency), Article 7( PINS), Article 10(Child abuse and neglect).

NYS Codes, Rules, Regulations (NYCRR): 18 NYCRR, §§ 357, 423.

#### **Definitions:**

**"abused child"**—a child under 18 whose parent or other legally responsible person has inflicted or allowed others to inflict physical injury that causes or creates a risk of death, serious and protracted disfigurement, protracted impairment of health or protracted impairment of the functioning of the child's body, 2) created or allowed others to create a substantial risk of these conditions, or 3) committed or allowed others to commit a sex offense against the child.

**"neglected child"**—a child under 18 whose physical, mental or emotional condition has been impaired or is at imminent risk of impairment because a parent or other legally responsible person has not provided a minimum degree of care by: 1) failing to provide sufficient food, clothing, shelter, education or medical care, 2) failing to provide proper supervision or guardianship, 3) using corporal punishment in an excessive manner, 4) misusing drugs or alcohol, 5) engaging in other acts of a similarly serious nature.

**"abandoned child"**—a child under 18 who is abandoned by both parents, or by the parent having custody, or by any other person(s) having care and custody.

**"destitute child"**—a child who, through no neglect on the part of its parent, guardian or custodian, is destitute, homeless, or in a state

of want or suffering due to lack of sufficient food, clothing, or shelter, or medical or surgical care, or a person under the age of eighteen years who is absent from his legal residence without consent or a person under the age of eighteen who is without a place of shelter where supervision and care are available.

**"freed child"**—this term refers to a child whose parents have had their parental rights terminated by the court and are not yet legally adopted.

**"person in need of supervision ( PINS)"**—a person less than eighteen years of age who does not attend school in accordance with education law, is incorrigible, ungovernable or beyond the control of parent or person legally responsible for their care or unlawfully possesses marijuana.

**"juvenile delinquent (JD)"**—a person over the age of seven and less than sixteen years old who has committed an act that would constitute a crime if committed by an adult.

**"care and custody of a child"**—child is placed formally by Family Court in the physical care and legal custody of DHS, with DHS responsible for full care of the child and decisions relating to that child's care.

**"legal guardianship of a child"**—this decision is made by Court giving an individual, or in some instances, DHS, the full legal responsibility for a child instead of their parent(s).

**"ward of the state"**—this term refers to children and youth who are placed by Family Court with either the DHS (for family foster care, residential or group care on CPS, PINS or JD matters) or with the Office of Children and Family Services ( OCFS) for JD placement.

#### **Types of Out of Home Family Care**

**"certified foster care"**—foster parents certified to care for children and youth placed in the care and custody of DHS by Family Court. Certification entails inspection of the prospective foster parents' home, criminal and child abuse background checks on all family members and extensive pre-certification training. Certified foster care homes are administered by the Monroe County DHS Homefinding Unit (585 753-6522 or 585 753-6051)

**"relative care"**—children are placed by court order into the home of a relative; the family's DHS caseworker oversees the safety of this placement.

**"kinGap care"**—relatives become certified as foster parents, receive foster care stipends, must be observed with a child for at least 6 months after certification, and meet other guidelines. The family's DHS caseworker oversees the safety of this placement. More information is available in the DHS Homefinding Unit.

**"therapeutic foster care (TFC)"**—The idea behind TFC includes enhanced services and fewer children in the foster home. Monroe County is no longer contracting for TFC care in-county. DHS does have contracts with providers that are out-of-county that are occasionally used.

**"family based treatment (FBT) homes"**—FBT homes as they were known, were part of the Office Of Mental Health (OMH) continuum of mental health treatment and were phased out by OMH in 2011.

#### **Resources for additional information:**

New York State Office of Children and Family Services (OCFS)

[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)

Monroe County DHS Foster Care

[www.monroecounty.gov/hs-fostercare.php](http://www.monroecounty.gov/hs-fostercare.php)



## SERVICE AREA DESCRIPTION

Child Protective Services (CPS) is charged with protecting children under age 18 from abuse and neglect by their parents and other legally responsible persons. CPS receives reports of suspected abuse and neglect of children, investigates to determine if abuse or neglect has occurred, provides protective services for children and rehabilitative services for children and families to prevent further child maltreatment. New York State law mandates certain individuals to report suspected child abuse or neglect. These include a large number of persons who have regular contact with children in the course of their work (medical, dental, education, law enforcement, day care, counseling and human service workers, among others). Any other individual who suspects child abuse is also encouraged to report. In New York State, Child Protective Services is operated by each county as a required social services protective function. The Department of Human Services (DHS) operates Child Protective Services in Monroe County.

## Confidentiality Requirements

### **What constitutes a Child Protective services record? Which parts of the record are confidential?**

1. A Child Protective (CPS) record is the report made to the New York State Child Abuse and Maltreatment Register and all information, records, photos and other materials the Department of Social Services (Department of Human Services in Monroe County) or New York State Office of Children and Family Services (OCFS) has concerning that report.
2. CPS information is strictly confidential, with criminal penalties for unauthorized release.
3. All records created for child protective reports included in the Family Assessment Response (FAR) track are also confidential. (See definitions section for description of FAR.)

### **Are there restrictions on what information can be shared and with whom?**

Subjects of a CPS report, children and others named in the report can have access to some information in their record, but cannot authorize release to other parties.

For Family Assessment Response (FAR) track records, DHS and the State (OCFS) can release to certain individuals, agencies, and institutions and the subject of the report may also release FAR information in some situations.

### **Who gives consent for sharing information?**

DHS and the State (OCFS) consent to the release of CPS information to certain individuals, agencies and institutions under specific circumstances allowed by law.

### **Who has access to CPS files without parent or minor consent? Under what circumstances is access allowed?**

Social Services Law allows DHS to release all or part of a CPS record in 26 situations; sharing information with service providers is one of these. SSL § 422A provides a list of all permitted releases for CPS records. SSL § 427 provides a list of releases for FAR information.

## Consent Requirements

### **Who consents to services for student?**

1. No consent from child or parent is needed to make a report of suspected child abuse or neglect, nor is any notice required to the child or parent that a CPS report is being made.
2. Parent consent for services is required when a child is home or with relatives under CPS supervision. ( See Foster Care section for consent if child is in Foster Care under a CPS order from Family Court).

### **When can a student consent for services?**

A minor can report abuse or neglect and needs no consent or permission from anyone to do so.

### **When is no consent needed to access services for child?**

Parental consent is not needed to report suspected child abuse or neglect or to access services for a CPS supervised child if parent refuses. When a parent refuses to consent, the child's CPS worker should be contacted to secure consent.

### **Applicable Laws and Regulations:**

NYS Social Services Law (SSL): §§ 411-428

NYS Family Court Act ( FCA): Article 10

### **Definitions:**

**"family assessment response (FAR)"**—New York State law allows local CPS to respond differently to accepted child protective reports using the Family Assessment Response (FAR) in certain circumstances. Inclusion in this track depends on several criteria. These include the severity of the allegations. Child abuse allegations are screened out as FAR only handles allegations of child neglect. The family has to be willing to participate. FAR uses a solution-focused, family-driven approach to address the safety and risk factors that may be present. There is an emphasis on family engagement and the involvement of community resources and the family's network of formal and informal supports to assess for strengths and meet family needs. FAR serves as an alternative to the CPS investigative and legal processes.

**"abused child"**—a child under 18 whose parent or other legally responsible person has inflicted or allowed others to inflict physical injury that causes or creates a risk of death, serious and protracted disfigurement, protracted impairment of health or protracted impairment of the functioning of the child's body, 2) created or allowed others to create a substantial risk of these conditions, or 3) committed or allowed others to commit a sex offense against the child.

**"neglected child"**—a child under 18 whose physical, mental or emotional condition has been impaired or is at imminent risk of impairment because a parent or other legally responsible person has not provided a minimum degree of care by: 1) failing to provide sufficient food, clothing, shelter, education or medical care, 2) failing to provide proper supervision or guardianship, 3) using corporal punishment in an excessive manner, 4) misusing drugs or alcohol, 5) engaging in other acts of a similarly serious nature.

**"legally responsible person"**—parents, legal guardians, day care providers, foster care providers, employees and volunteers in residential facilities for children, and adults who live in a child's household or are regularly present in a child's household.

**"unfounded report"**—a report of suspected child abuse or neglect where no credible evidence of abuse or neglect has been found after investigation.

**"indicated report"**—a report of suspected child abuse or neglect where credible evidence of abuse and neglect has been found after investigation.

**"court-ordered CPS Supervision"**—Family Court has ordered CPS to provide supervision and services to a family and child to prevent further neglect or abuse. In some instances, children are residing with their parent(s) or a relative while CPS supervision is occurring.

### **Resources for additional information:**

[www.dorightbykids.org](http://www.dorightbykids.org)

Guide to the Child Protective System in New York: <http://assembly.state.ny.us/comm/Children/20011016>

## SERVICE AREA DESCRIPTION

Under New York State Social Services Law, Preventive Services are supportive and rehabilitative services provided to children and families to avert family disruption that could lead to placement of a child in foster care, to enable a child to return home from foster care sooner or to maintain a child in the community after discharge from foster care.

A variety of services are available to eligible children and families including: case management, counseling, day care, homemaker/housekeeper, family planning, parent aide, parent training, clinical treatments and emergency cash, goods or housing.

Preventive services are voluntary for families except when they are court-ordered. Counties can provide preventive services directly or contract with qualified agencies to deliver services.

## Confidentiality Requirements

### **What constitutes a DHS preventive services record? Which parts of the record are confidential?**

1. The record consists of all information obtained about a person and family applying for or receiving preventive services. This includes both written and electronic DHS records and the written and electronic records of a contract agency providing preventive services to a child and family.
2. All records established and maintained for applicants to and recipients of preventive services are confidential.

### **Are there restrictions on what information can be shared and with whom?**

1. A parent or child consenting to release of preventive services information must specify in writing the information to be disclosed, any limitations on the disclosure and the time period for which the consent is effective or when it ends.
2. A parent or child can consent to re-release of their preventive services information, specifying to whom the information is to be released. Limits on re-disclosure must be specified in the written consent.
3. Any person or entity given access to preventive records cannot divulge client identifying information except with written consent of parent or child or by order of a court of competent jurisdiction.

### **Who gives consent for sharing information?**

1. A parent may consent to release of client identifiable information for him or herself and his or her family, including all children.
2. A minor can consent to release of client identifiable information regarding him or herself when minor's parent(s) are unavailable or lack capacity to consent and child has capacity to consent.
3. For these preventive services, the capacity to consent means an individual's ability, determined without regard to such individual's age, to understand and appreciate the nature and consequence of a proposed action, treatment or procedure and to make an informed decision concerning such action, treatment or procedure.

### **Who has access to preventive services files without parent or youth consent? Under what circumstances is access allowed?**

Preventive Service Records can be accessed by:

1. State Office of Children and Family Services (OCFS).
2. Local Departments of Social Services ( Department of Human Services, DHS, in Monroe County)
3. An agency providing preventive services to child and/or the child's family.
4. Any person or entity by order of a court of competent jurisdiction.
5. Any other person or entity agreeing to provide services to child or child's family with written consent of parent or child.

6. Researchers, the State Comptroller's office and county auditors may have access to preventive services records, but access is limited to non-identifiable information unless specifically required and approved by OCFS.

## Consent Requirements

### **Who consents to DHS preventive services for minor?**

1. When a minor is living at home with parents, parent(s) must consent to preventive services.
2. When a child is in foster care under a court order for Child Protective Services (CPS), Juvenile Delinquency (JD) or as a Person In Need of Supervision (PINS), then DHS (not the foster parent) must consent to preventive services. When child is in foster care as a voluntary placement, DHS must seek parental consent for services in some instances. Schools and agencies will not necessarily know the type of foster care placement a child is in so contact should be made with the DHS caseworker for required consents for all children who are in foster care.
3. When a child is in care of a relative under CPS court-ordered supervision, then consent may depend on the court order so the DHS caseworker should be contacted to determine who can consent.

### **When can a minor consent for preventive services? Who cannot consent?**

No one other than those specified above can consent for preventive services.

### **When is no consent needed to access preventive services for a minor?**

Preventive Services cannot be provided without consents as described above.

### **Applicable Laws and Regulations:**

NYS Social Services Law ( SSL): SSL §§ 137, 409-409A  
NYS Codes, Rules, Regulations ( NYCCR); 18NYCRR 423 and 430

### **Definitions:**

**"parent"**—parent, for purposes of preventive services consents, is a natural, adoptive or stepparent, guardian, or a caretaker with whom the child legally resides.

**"foster care"**—an out of home placement of a child approved and authorized by Family Court to provide safety and services for abused or neglected children, PINS, JDs, or when a family cannot care for their child and voluntarily places child. Foster care placements can be in certified foster family homes or in group homes and residential settings approved by NY State Office of Children and Family Services (OCFS).

**"eligibility for preventive services"**—DHS must determine eligibility for preventive services by assessing the risks and conditions facing the family and child. These include health and safety risks, the occurrence of abuse or neglect of the child in the previous 12 months, service needs of the parent that affect their ability or availability to care for the child and the service needs of the child that present a risk to his or her physical or emotional health and well being (e.g. behavior problems).

### **Resources for additional information:**

Monroe County Website, Department of Human Services:  
[www.monroecounty.gov/hs-preventative.php](http://www.monroecounty.gov/hs-preventative.php)

## SERVICE AREA DESCRIPTION

Services are intended to protect runaway and homeless youth, work towards reuniting them with family whenever possible and arrange or provide services to establish a permanent, safe living situation. Runaway and Homeless Youth (RHY) services include information, crisis and ongoing counseling, temporary shelter, and support to transition to independent living if necessary. RHY services are provided by agencies approved by New York State to provide such services.

## Confidentiality Requirements

### **What constitutes a RHY record? Which parts of the record are confidential?**

1. The RHY record is both individual records on runaway and homeless youth and statistical records profiling the youth and family members served by the RHY programs.
2. Records or files, in whole or in part, on RHY youth cannot be disclosed to any person, agency or institution, except for a child protective report and any investigation conducted pursuant to that report.

### **Are there restrictions on what information can be shared and with whom?**

RHY information cannot be re-disclosed.

### **Who gives consent for sharing information?**

Only the youth themselves can consent to release of their RHY record information, via written, informed consent. **NOTE:** informed consent is not required to assist a runaway or homeless youth to access emergency services when there is an imminent threat of harm to self or others.

### **Who has access to student files without youth consent? Under what circumstances is access allowed?**

1. Statistical reports/profiles can be released but with no identifiers of individual runaway and homeless youth.
2. A program monitor from a public agency (Federal, State and County) can have access to individual youth files for monitoring compliance of an RHY program. Monitors are bound by RHY confidentiality and cannot release information from the files to a third party.

## Consent Requirements

### **Who consents to RHY services for youth?**

1. Youth consents for both residential and non-residential runaway services. Youth can stay for up to 30 days in a certified runaway shelter without consent of their parent or legal guardian.
2. Parent must be notified that a youth is in a runaway shelter within 72 hours.
3. In order for a youth to stay for more than 30 days (up to 60 days) in a runaway shelter, the shelter must have written approval of the youth's parent or legal guardian and the county Runaway Homeless Youth Service Coordinator.

### **When can a youth consent for RHY services?**

The minor is the only one who can consent for these services.

### **Who cannot consent?**

Parent, guardian, courts or anyone else other than the child themselves.

### **When is no consent needed to access services for child?**

Youth must always voluntarily consent to RHY services.

## Applicable Laws and Regulations:

NYS Runaway and Homeless Youth Act: Executive Law 19-H, §§ 532-532e

Federal Runaway and Homeless Youth Act: PL 106-71

Federal Missing, Exploited and Runaway Children Protection ACT, 42 USC Chapter 72

New York Codes, Rules, Regulations: 9 NYCRR 182

## Definitions:

**“runaway youth”**—person under the age of 18 who is absent from his/her legal residence without the consent of parent, legal guardian or custodian.

**“homeless youth”**—person under the age of 21 who is in need of services and is without a place of shelter where supervision and care are available.

**“county runaway coordinator”**—the person designated by a county whose duties include, but are not limited to, answering inquiries at any time concerning transportation, shelter and other services available to runaway and homeless youth. The RHYA coordinator is usually located at the county Youth Bureau.

## Resources for additional information:

[www.acf.hhs.gov/programs/fysb](http://www.acf.hhs.gov/programs/fysb)

The Empire State Coalition of Youth and Family Services:

[www.empirestatecoalition.org/main/legal/emanc.html](http://www.empirestatecoalition.org/main/legal/emanc.html)

## SERVICE AREA DESCRIPTION

Probation supervision and services are aimed at preventing juvenile delinquency and crime by providing individual offenders and their families with services to help them avoid delinquent or criminal behavior in the future. Youth aged 7 to 21 may be placed on probation by a Court if they have committed criminal acts or acts that would be considered crimes if they were older or if they are exhibiting patterns of ungovernable or truant behaviors. Probation also provides a variety of services for youth to resolve behavior and family problems and prevent official Court action. Probation provides services directly and by referral. All services are provided in the community, including schools.

## Confidentiality Requirements

### **What constitutes the probation record? Which parts of the record are confidential?**

1. The probation record includes all records for intake and diversion, legal documents, pre and post disposition reports and supervision records.
2. The entire probation record is confidential.

### **Are there restrictions on what information can be shared and with whom?**

1. Some parts of the probation record cannot be released if they are property of the Court. Examples: Court-ordered investigations and evaluations are property of the Court.
2. Probation information that is sealed or subject to sealing, such as Juvenile Delinquency (JD), Person in Need of Supervision (PINS) or Youthful Offender (YO) matters, cannot be released.
3. Probation information cannot be re-released without the written permission of the Probation Director.

### **Who gives consent for sharing information?**

1. Parent or legal guardian may consent to the release of permitted information (information that is not Court property) in the record.
2. Probation can share general information with service providers about a youth and family, as it pertains to their involvement with probation, with a signed release from the youth and parent or legal guardian.

### **Who has access to probation files without parent or youth consent? Under what circumstances is access allowed?**

1. Probation Officer, Judge, Law Guardian and Juvenile Prosecutor have access to the probation record without parent or student consent.
2. Probation can release information in several other situations. These include:
  - Child Protective Investigations: when the Probation Director or his/her designee determines the probation records of a person presently under supervision are relevant to an investigation of child abuse or maltreatment, probation records or portions of records can be released to child protective services.
  - A Probation Director or designee can release relevant probation record information that is not otherwise sealed or specifically restricted by state or local law, and concerns any adult offender (other than a Youthful Offender) or finger printable juvenile delinquent who is or has been under probation supervision, to authorized authorities or agencies for specific purposes such as: homeland security, criminal investigations, victim safety, military eligibility, professional licensing and several other circumstances. Probation regulations (9NYCRR348) should be consulted for a full listing of permissible information releases.

3. Probation records may be accessible for research when the Probation Director or designee has made a finding of bone fide research and given approval for the research.

## Consent Requirements

### **Who consents to probation services for youth?**

Parent and youth consent for PINS or JD Diversion services or services recommended or ordered when youth is under probation supervision for PINS or JD adjudication.

### **When can a student consent for probation services?**

Youth who are 18 years of age and over can consent to services ordered with Probation.

### **Who cannot consent for probation services?**

No one other than parent, legal guardian or youth him or herself can consent. A Probation Officer cannot consent for services for a youth.

## APPLICABLE LAWS AND REGULATIONS

NYS Family Court Act (FCA): Article 3 (Juvenile Delinquency)

NYS Family Court Act (FCA): Article 7 (PINS)

NYS Criminal Procedure Law: CPL, Article 720

NYS Executive Law: Article 12 A-B (Probation and Correctional Alternatives)

NYS Codes, Rules, Regulations (NYCRR): 9 NYCRR 348 (confidentiality).

## DEFINITIONS

**“juvenile delinquent (JD)”**—a person over the age of seven and less than 16 years old who has committed an act that would constitute a crime if committed by an adult.

**“person in need of supervision (PINS)”**—a person less than eighteen years of age who does not attend school in accordance with education law, is incorrigible, ungovernable or beyond the control of parent or person legally responsible for their care or unlawfully possesses marijuana.

**“juvenile offender (JO)”**—youth aged 13-15 who has been convicted of a very serious felony offense and is treated as an adult for probation supervision.

**“youthful offender (YO)”**—youth aged 16-18 (adults under NYS criminal law), who has committed a crime may be given YO status which affords him or her additional confidentiality and is an alternative to a criminal conviction. YO status must be applied for and is intended for first and less serious offenses.

**“diversion”**—attempt by probation to resolve a matter (usually PINS or lower level delinquency) by providing services and supports to youth and family without referral to Family Court. Diversion attempts are mandated by NYS law in PINS matters.

**“adjudication”**—decision by a judge after hearing evidence. Adjudication is the Family Court equivalent of a conviction in Criminal Court.

### **Resources for additional information:**

[www.criminaljustice.ny.us](http://www.criminaljustice.ny.us)

## SERVICE AREA DESCRIPTION

As a law enforcement agency, Rochester Police Department (RPD) provides for public safety through activities to prevent, control and reduce crime. RPD has contact with children and youth in several types of circumstance, including routine contacts in the community or in schools, crime prevention workshops conducted by police officers, interviews when youth are victims or possible perpetrators of illegal acts. In many of these situations, no consent or notification of the parent or child is required for the contact to occur. In others (specifically where there is an investigation or arrest of a juvenile for a crime), there are requirements for parents to be notified so they can be involved and assure the child's rights are protected.

The following sections describe authority of RPD to interact with children and youth in common situations, when parental notification of police contact with youth is required and the confidentiality requirements for law enforcement information, including juvenile and adult criminal records.

### Confidentiality Requirements

#### **What constitutes a criminal or juvenile record? Which parts of the record are confidential?**

All Rochester Police Department (RPD) information is considered confidential unless otherwise provided by law, by current directives or as directed by supervisor. Confidential information is more specifically defined as:

1. Criminal history, juvenile contact and juvenile delinquency history on both adults (aged 16 and over in New York State) and juveniles (aged 7 through 15 in New York State).
2. Beyond the "official" criminal and juvenile history, any information in police records, radio communications, photographs, electronic files, teletypes or other files or information in any form whatsoever.
3. Evidence arising out of a criminal investigation or civil proceeding.

#### **Are there restrictions on what criminal and juvenile record information can be shared and with whom?**

Certain criminal and juvenile records or portions of these are "sealed" by a court and have additional confidentiality protection. These include juvenile delinquency records and Youthful Offender (YO) records. Sealed records cannot be shared without a court order.

#### **Who gives consent for sharing juvenile and criminal justice record information?**

1. Parents give consent for information on minors to be shared.
2. Adults give written consent for others to access their criminal records.

#### **Who has access to juvenile and criminal justice files without parent or youth consent? Under what circumstances is access allowed?**

1. Juvenile and adult criminal records can be accessed by certain agencies and organizations that need to have the information for legitimate purposes. These include specific departments and individuals within RPD, courts and court officers, prosecutors, other law enforcement agencies, probation, parole and a variety of other local, state and federal public agencies such as immigration, social services, and the child support enforcement authority.
2. Laws regarding juvenile delinquency and Youth Offender convictions specifically allow for certain information on these convictions to be shared with the "designated education official" in the student's elementary or secondary school for use in planning the student's educational services.
3. Probation, who plans for services for delinquents, the Department of Human Services and the Office of Children and Family Service (OCFS), with whom courts place youth for services, also have access to juvenile history records.

### Consent and Parental Notification Requirements for Law Enforcement Contacts with Children and Youth

#### **No consent is needed for law enforcement to:**

1. Contact and interview child victims.
2. Take a youth into custody without parent consent when there is a warrant issued for juvenile delinquency, Person In Need of Supervision (PINS) or a criminal act. For juvenile delinquency and

PINS warrants, police transport youth to the location specified in the warrant and notify the parent or guardian.

3. Take a child or youth into custody when he or she is in danger and unsafe.

#### **Juvenile Delinquency and Criminal Investigations and Arrests**

Police can arrest a juvenile (aged 7-15) and take him or her into custody without a warrant if they have reasonable cause to believe that youth may have committed a crime and where the crime alleged would be a misdemeanor or felony if committed by an adult. In such instances police are to make every reasonable effort to notify parent and have them present before the youth is interviewed for the crime. There are also strict requirements on where the youth can be interviewed by police (designated interviewing room at police headquarters or at home if parents are present). Finally, there are also requirements for and restrictions on interviewing (time limited, time of day, must be advised of Miranda rights etc) to protect the child.

A youth aged 16 or over can be taken into custody without a warrant if there is reasonable cause to believe the youth may have committed a crime. At 16 youth are treated as adults for criminal matters and no notification of parent or guardian is required.

#### **Persons in Need of Supervision**

Youth cannot be arrested by police for acts that do not constitute a crime, but can be taken into custody if necessary to stop behavior that is endangering the youth. Police are then required to return the youth to a parent or other legally responsible person.

#### **Searches and Interrogations in Schools**

Rochester City School District(RCSD) policies limit law enforcement authority to interview or search students in schools or at school functions or to use school facilities in connection with criminal investigations. Police officials may enter school property or a school function to question or search a student or to conduct a criminal investigation involving students only if they have: a search or an arrest warrant, or probable cause to believe a crime has been committed on school property or at a school function, or have been invited by school officials. School Resource Officers (SROs) by their function are deemed invited into their assigned schools. RCSD Code of Conduct, Section §5300.60 provides additional information on District policies for questioning, or searching students on school property.

#### **Applicable Laws and Regulations:**

Rochester Police Department, General Orders (RPD GO)  
Rochester City School District , Code of Conduct: §5300.60 ( Police Searches/Interrogations)  
NYS Family Court Act (FCA): Article 3,§301.2 ( delinquency information and schools)  
NYS Criminal Procedure Law(CPL): §380.90 (Youthful Offender information and schools)

#### **Definitions:**

**"school resource officer (SRO)"**—sworn RPD officers who are assigned to full duty in Rochester City Schools. SROs have all the regular duties of their rank and perform a range of other activities to educate schools and students about law and public safety, to help the school to prevent and reduce crimes, develop positive and supportive relationships with students (including individual counseling and mentoring of students), provide crisis intervention and mediation services, assist with the school's emergency plan and act as a liaison between the school and law enforcement.

**"warrant"**—official document, signed by a judge, authorizing a police official to take a person into custody.

**"person in need of supervision (PINS)"**—a person less than eighteen years of age who does not attend school in accordance with education law, is incorrigible, ungovernable or beyond the control of parent or person legally responsible for their care or unlawfully possesses marijuana.

**"juvenile delinquent (JD)"**—a person over the age of seven and less than 16 years old who has committed an act that would constitute a crime if committed by an adult.

**"youthful offender (YO)"**—youth aged 16- 18 (adults under NYS criminal law), who have committed a crime may be given YO status which affords them additional confidentiality and is an alternative to a criminal conviction. YO status must be applied for and is intended for first and less serious offenses.

**Purpose/Description:**

Unlike a number of other states, New York has no emancipation statute. As a result there is no court declaration of emancipation in New York. Systems and providers, however, may recognize or consider youth under 18 years of age as emancipated. Youth may be so recognized when their parents' conduct is inconsistent with the exercise of custody and control over the youth and/or the youth is living in a manner that is inconsistent with parental exercise of custody and control.

**NOTE:** A youth being considered emancipated is generally not a preferred approach; however, in limited situations emancipation may be helpful to secure access to services for some youth.

**Applicable Laws and Regulations:**

There is no emancipation statute or court proceeding in which an order of emancipation can be obtained in New York. Whether a youth living away from home may be recognized as an emancipated minor depends on the facts and the law related to the right, benefit, service or system that the youth seeks to exercise or access. Youth who are recognized as emancipated by one or more systems do not have the same rights as an adult in all areas of the law. As a result, that one system recognizes a youth as emancipated is not binding on any other system or provider.

**Definitions:**

In New York State, the following criteria are used to determine whether to recognize a youth as an **"emancipated minor"**:

- 1) living separate and apart from their parents;
- 2) not receiving any financial support from parents (except by court order or benefits to which they are entitled, i.e. Social Security);
- 3) managing his or her own financial affairs;
- 4) living beyond the parent's custody and control; and
- 5) not in foster care.

**NOTE:** Minors who are married are recognized as emancipated as are minors in the military.

**What is the process for obtaining emancipation status?**

There is no standard or uniform procedure which applies across all systems.

Youth who seek to be recognized as emancipated should submit to a school, system or provider information which explains that s/he meets the above criteria for emancipation, and request that s/he be accorded certain rights as an emancipated minor. The youth may want to consult a youth legal service for assistance in developing written documentation of the above which can be submitted to his/her school, or a system or service provider.

**What rights does an emancipated minor have?**

If a young person can establish his/her emancipation through the test above, then the young person may have the following rights:

- The right to retain one's own wages.
- The right to sue for parental support if the parent forced the youth to leave home.
- The right to establish his/her own legal residence and attend school where he/she resides.
- If needy, eligibility for certain public benefits (depending on the circumstances of the young person's emancipation).
- The right to consent to routine health care without parental consent. However, the health care provider must recognize the youth as emancipated and allow consent and many providers are reluctant to do so.

**What rights are not available with emancipation?**

- Emancipation does not give a minor adult status in all areas.
- An emancipated minor is not allowed to vote.
- An emancipated minor may be required to obtain parental consent to get working papers and is limited in the kinds of jobs he/she can perform (Note: some school districts may grant working papers to youth considered emancipated, without parental consent).
- An emancipated minor cannot bring a lawsuit and must have an adult commence any litigation on his/her behalf.
- An emancipated minor cannot buy, sell or control real estate.
- Age and consent requirements to marry apply regardless of emancipation.
- An emancipated minor cannot join the military.
- An emancipated minor is subject to statutory rape laws and age requirements governing consent.
- An emancipated minor cannot get a learner's permit or driver's license without parental consent.
- An emancipated minor cannot rent a campsite.

**Can an emancipated minor enroll in school and consent for various health and support services they may need?**

- Education law and the laws controlling many other systems make provisions for minors to consent and receive services when parents are absent, unwilling or unable to give such consent or when the youth's situation and/or well being would be harmed without such service. Generally, a youth who may be recognized as emancipated will be able to enroll in school on their own or be eligible to enroll under the McKinney Vento Homeless Education Act.
- Emancipation status does not remove parental consent requirements for a minor seeking health care or other services. However, as in any case involving a minor, an emancipated minor can obtain health care without parental consent when it involves an emergency, a sexually transmitted disease, family planning services, alcohol and mental health treatment, or if the minor is pregnant, a parent, or married. As noted above, some youth health centers may provide routine health care to youth recognized as emancipated, without parental consent.
- The legal and regulatory provisions of education law and each service system regarding minor consents should be used for emancipated minors, absent a specific consent provision for emancipated minors.

**Are service records for emancipated minors confidential?**

The legal and regulatory provisions of education law and each service system regarding confidentiality of service records should be used for emancipated minors, absent a specific confidentiality provision for emancipated minors.

**Resources for additional information:**

Youth Advocacy Program of the Legal Aid Society:  
[www.lasroc.org](http://www.lasroc.org)

The Empire State Coalition of Youth and Family Services:  
[www.empirestatecoalition.org/main/legal/emanc.html](http://www.empirestatecoalition.org/main/legal/emanc.html)

## MANDATED REPORTING

Anyone who suspects that a child is being abused or neglected can call the Monroe County Child Abuse Hotline and report his or her concerns. In addition, some individuals are mandated by State Law to report. Mandated reporters are in professions that interact with children on a regular basis and are in a good position to notice injuries, changes in behaviors, and other indicators that may be early signs of child abuse or neglect. Health and human service providers, medical providers, educators, law enforcement officers, and child care providers are among the many mandated reporter categories.

If you are one of these mandated reporters, you are required by New York State law to call the Hotline if you have a reasonable suspicion that child abuse or neglect may have occurred.

### ***What should one do if a child is suspected of being abused or neglected?***

Call the **Monroe County Child Abuse Reporting Hotline** at: **(585) 461-5690**. You can call anytime of the day or night. When you call, a Child Protective Services intake specialist will ask you for information about the child's family and about how and why you think the child is being mistreated. If the situation you describe meets the legal standards that are required for Child Protective Services to take action, a report of your suspicions will be registered with the New York Statewide Central Register of Child Abuse and Maltreatment.

### ***What happens when a child abuse or neglect report is registered?***

All situations that are recorded in the New York State Child Abuse and Maltreatment Register must be investigated by caseworkers from Child Protective Services or included in the Family Assessment Response track (FAR) if the report meets the criteria for the track is accepted after safety risk assessment and is agreed to by the subject family.

**For reports handled through the CPS investigation process,** the investigation must begin within 24 hours of the time the child abuse or neglect report was recorded and must include the following steps:

- An immediate assessment of the safety of the children in the household;
- A visit to the home to assess the living conditions and interaction between the family members;
- Personal observations and interviews with all members of the household;
- Contact with the person who made the child abuse or neglect report to gather more information;
- Contact with other people who are in a position to provide relevant information about the family's situation;
- A decision about whether evidence of child abuse or neglect exists;
- Development of a plan to protect the abused or neglected children and reduce the risk of further child abuse or neglect.

**For reports potentially eligible for the Family Assessment Response Track, a different process is used.**

The process for including families in the Family Assessment Response (FAR) track is conducted by the local CPS after a child

maltreatment report for the family has been accepted by the New York State Central Register. Once the report has been accepted, it is screened for eligibility for FAR. Criteria for FAR include the severity of the allegations. Reports alleging child abuse and reports about families who are already open and involved with article 10 neglect petitions or court orders are screened ineligible for FAR. Generally, reports of child neglect are screened eligible for FAR. Once the report is screened FAR eligible, the assigned caseworker contacts the family to explain the FAR and Investigative tracks. 24 hour and Seven-day safety assessments are done in accordance with NY OCFS regulations. When the family is willing to accept FAR and the safety decision is low (1 or 2), the report progresses to FAR for provision of services. When the family refuses and or the safety decision is intermediate or high (3 or above) the report must be assigned to the CPS investigative track. Reports of child fatalities, child sexual abuse, assault of a child, failure to thrive and reports of a child subjected to repeated and severe abuse are excluded from FAR.

FAR uses a solution-focused, family-driven approach to address safety and risk factors that may be present. There is an emphasis on family engagement and involvement of community resources, including the family's network of formal and informal supports to assess for strengths and meet family needs. The family decides who those supports are, and they may or may not include the source of the CPS report.

FAR may be ended when the service goals have been successfully completed (up to 60 or 90 days). FAR services may also end when children are deemed to be unsafe (new safety concerns arise) and the family refuses to continue participation in FAR. A new CPS report would need to be generated with the concerns. Family Assessment Response does not focus on the allegations of the report, but rather seeks to engage with families to identify and build on strengths in order to address the needs. The primary focus of service intervention is to address underlying needs and promote child safety, well being and permanence. There is no determination decision of "Indicated" or "Unfounded". FAR records are sealed for 10 years.

### ***Is there confidentiality for reporters of abuse or neglect?***

Generally, Child Protective caseworkers are prohibited by law from identifying people who make child abuse or neglect reports. In rare instances, a Child Protective caseworker may tell a family who made a report. This could occur when:

- The person who made the report gives written permission to tell the family;
- A judge orders that the identity of the person who made the report be provided in a court hearing.

### **Resources for additional information:**

Summary Guide for Mandated Reporters in New York State:  
[www.ocfs.state.ny.us/main/publications/PUB1159text.asp](http://www.ocfs.state.ny.us/main/publications/PUB1159text.asp)

FAQs about Mandated Reporting:  
[www.ocfs.state.ny.us/main/prevention/faqs\\_mandatedreporter.asp](http://www.ocfs.state.ny.us/main/prevention/faqs_mandatedreporter.asp)

**Purpose/Description:**

Generally speaking, incarcerated parents retain their legal authority to make decisions for their children unless their parental rights have been terminated or their decision making has been subrogated by a Court.

However, even though parental rights are intact and the parent/child relationship continues, incarcerated parents have communication and visitation restrictions and are often imprisoned at a distance from the child. These factors reduce their availability to make decisions and provide consents for the health, education, medical and other services for the child.

Ideally, decisions for the child(ren) of incarcerated parents can be made by:

- the other, non incarcerated parent who has custody of the child and is available to provide care and consents, OR
- A legally recognized, non custodial parent who steps forward to take custody of the child and provide care and consents, OR
- A legal guardian appointed by the Court to care for the child(ren) when no custodial parent is available or able to do so.

**Consents for children who do not have a custodial parent or legal guardian providing their care and consent while their parent is incarcerated.**

Many children and youth, including those with incarcerated parents, reside with relatives and other caretakers who do not have legal custody or legal guardianship.

Special education and several other service systems for children make specific provisions for others or the minor child themselves to apply for and/or consent to service when a parent or legal guardian is not available.

**Some examples of provisions that can be utilized to secure consent for children of incarcerated parents are listed below.** These are not all inclusive.

- **Temporary Financial Assistance, Medicaid and Child Health plus:** relatives, caretakers and others who do not have legal custody or guardianship of a child are permitted to apply and consent for these benefits programs for the child.
- **Special Education: Individuals with Disabilities Act (IDEA):** in addition to parents and legal guardians, IDEA allows others "in parental relationship" to a child to consent for special education services. These include: grandparent, step-parent, custodian who is presumed to act as a parent because of the death, imprisonment or absence of the parent or designated in parental relationship by the parent. The School District can also appoint a surrogate to make educational decisions for a child.

IDEA makes specific reference to consents for children of incarcerated parents as follows:

If the child is in foster care and the birth or adoptive parent is incarcerated, the parent retains the authority to make education decisions including consenting for CSE, unless the parent's rights have been terminated or surrendered.

If after reasonable efforts, the parent cannot be located in any correctional facility, and no other custodial parent or legal guardian is available to provide consent, a surrogate parent may be appointed.

If the child is not in foster care and is living with a caregiver because the birth or adoptive parent has been convicted of a crime or pled guilty and been sentenced (imprisoned), the consent of the parent is not required. The child's caregiver may be considered a person in parental relation and sign necessary consents. However, if the parent is incarcerated but has not yet been sentenced, consent of the parent is required, unless another custodial parent or legal guardian is available to provide consent.

**Minor Consent Provisions:** can also be utilized to obtain consent for some services when parents are unavailable and there is no legal guardian. See the Mental Health, Substance Abuse and Health Care sections of this guide for criteria and circumstances for minor consents.

**McKinney-Vento Homeless Education Assistance Act:** Children of incarcerated parents may be considered homeless if they are living with a caregiver who is not their parent or legal guardian, or are not in the physical custody of any caregiver, are sharing housing due to jailing or imprisonment of parent(s) and other similar circumstances. McKinney-Vento entitles children and youth who meet the "homeless" criteria to enroll in school and receive a number of education-related supports without parental consent ( see McKinney-Vento Section of this guide for further information)

**Access to Emergency Services:** Parental consent is not needed if a doctor determines: an emergency exists, a minor is in need of immediate medical care and a delay in treatment to obtain consent would be harmful to the patient.

**Locating an Incarcerated Parent:** Inmate locator services are available to assist in finding parents for consent or communication about their children.

**Monroe County Jail and Correctional Facility:** [www.monroecounty.gov/Sheriff-inmate](http://www.monroecounty.gov/Sheriff-inmate) ; inmate roster is updated daily Monday to Friday

**New York State Correctional Facilities:** <http://nysdocslookup.docs.state.ny.us>;

**Federal Correctional Facilities:** [www.bop.gov/iloc2/LocateInmate.jsp](http://www.bop.gov/iloc2/LocateInmate.jsp) .

**Definitions:**

**Jail:** facility used for pre-trial detention or incarceration of a person who has been accused of a crime.

**Prison:** facility used for imprisonment of a person who has been convicted of a crime.

**Legal guardian:** an individual appointed by the court and given the right and responsibility to make decisions, including issuing any necessary consents regarding a child's protection, education, care and control, health and medical needs and the physical custody of the person of the child.

**Termination of Parental Rights (TPR):** this legal process of severing parental right can be voluntary- when a parents formally surrenders their rights, or involuntary by a court order.

**Resources for additional information:**

New York State Permanent Judicial Commission on Justice for Children: Incarcerated Parent information:

<http://www.nycourts.gov/ip/justiceforchildren/incarceratedparents.shtml>



Educators and youth service providers frequently encounter students from immigrant families in the course of their work.

This summary is intended to provide some very basic information on immigration in the United States including: the major groupings of immigrants and the eligibility of New York State families and children in these immigrant categories for public education and certain public benefit programs and essential services. **This summary is not intended to be a comprehensive or complete source of immigrations information or to provide legal advice. Legal Counsel should be consulted regarding any specific situation regarding the status and rights of an immigrant child and his or her family.**

#### Applicable Laws:

Immigration and Nationality Act  
Code of Federal Regulations: 8 CFR; Department of Homeland Security ( Immigration and Naturalization)  
Personal Responsibility and Work Opportunity Reconciliation Act PL 104-193  
Illegal Immigrations Reform and Immigrant Responsibility Act PL104-208  
Individuals with Disabilities Education Act (IDEA)  
NYS Social Services Law (SSL), § 122

#### Major Categories of Immigrants or Aliens

A citizen of the United States is a person, adult or child, who was born in the United States, or born to a parents who were United States citizens by birth or naturalization before their child was born. Individuals who are not US citizens and are residing in this country are immigrants or aliens

#### Legal Immigrants or Aliens: Major Groups

1. **Naturalized Citizen:** a person who was born a non-citizen and was granted US citizenship through the naturalization process. Individuals must be 18 years of age to naturalize. Immigrant children generally become citizens automatically when their parents are naturalized.
2. **Legal Permanent Resident (LPR):** a non-citizen residing in the US with permission (green card) to permanently live and work in this country. LPRs may apply for naturalization after five years(3 years if married to a US Citizen, 1 year for some people in the military or veterans)
3. **Refugee or Asylee:** a non-citizen granted permission to reside in the US due to well-founded fear of persecution in his or her country of origin. Persons granted such permission while outside the US are refugees; those granted permission after entry to the US are asylees. Refugees and asylees can apply for Legal Permanent Resident status after 1 year.
4. **Non-Immigrant:** person granted permission (visa) to enter the US for a specific purpose and for a specific period of time. These include students, workers, and tourists.

#### Illegal Alien or Undocumented Immigrant

A person who has entered the country illegally, without permission, or who entered through legal channels but then stayed past his or her visa expiration date or engaged in activities not permitted by their visa status (working).

**NOTE:** Children of immigrants in any of the categories above (including undocumented immigrants) who are born in the United States are citizens of this country by birth with all the rights and benefits of US citizenry.

#### Public Education for Children of Immigrants

Children with legal immigration status (Legal Permanent Resident, Refugee, Asylee and other legal immigrant categories) are entitled to free, public education for elementary and secondary grades (K-12).

As a result of the 1982 Plyer Vs. Doe case, the U.S. Supreme Court held that undocumented immigrant children have a right to a free public education for elementary and secondary grades. Undocumented children are eligible for activities and supports that are central to the student's education such as transportation and extra-curricular activities (clubs, sports).

There are also specific statutes and regulations that require inclusion of undocumented children in school related services such as The National School Lunch and School Breakfast programs and required services for students with disabilities under IDEA and Section 504 of the Rehabilitation Act of 1973.

**NOTE:** Individuals in the US on a Visa, while here with permission for a specific period of time are not considered immigrants. As a result, their children may be denied enrollment in the elementary and secondary public schools unless they can establish residency pursuant

to NYS Education Law. (Appeal of Plata (40 Ed Dept Rep 552, Decision No. 14,555, dated March 29, 2001)

School Districts are not required to report undocumented students to US immigration authorities. Further, schools/school staff should not voluntarily report undocumented students as this would violate FERPA requirements not to disclose such information without parent consent and may also constitute a denial of access to education contrary to the Plyer Court Decision.

#### Public Benefits and Services for Children of Immigrants in New York State

Federal law divides immigrants into two categories with regard to immigrant eligibility for major public benefit programs and income supports. Those in legal immigrant categories are "qualified" for benefits; undocumented immigrants are not qualified. Public benefits to immigrants are restricted even for those in qualified groups. Immigrant eligibility for public benefits in New York State:

##### 1. Legal Permanent Residents

- Eligible for: Medicaid and Family Health Plus Insurance, Child Health Plus Insurance, Safety Net Assistance, child care subsidies, public housing, Women, Infant, Children(WIC) program; unemployment insurance
- Restricted eligibility: those who entered the US after 8/22/96 are barred from receiving TANF/Financial Assistance and Supplemental Nutrition Assistance (SNAP, formerly Food Stamps) during their first 5 years as qualified immigrants. Those who entered before 8/22/96 can receive TANF and SNAP. Eligibility for Supplemental Security Income (SSI) is also restricted for those who entered the US after 8/22/96. SSI is barred until credit for 40 qualifying work quarters is accumulated AFTER 5 years of qualifying immigrant status.
- US Born Children of Legal Permanent Residents are citizens and are eligible for any public benefit program for which they would otherwise qualify ( by age, income level etc)

##### 2. Refugees and Asylees

- Eligible for: TANF/Financial Assistance, SNAP, Medicaid and Family Health Plus Insurance, Child Health Plus Insurance, Safety Net Assistance, child care subsidies, public housing, Women, Infant, Children(WIC) program, unemployment insurance
- Restricted Eligibility: eligibility for Supplemental Security Income is time limited to 7 years.
- US Born Children of Refugees and Asylees are citizens and eligible for any public benefit program for which they would otherwise qualify ( by age, income level etc)

##### 3. Undocumented Immigrants

- Restricted from most benefit programs
- Eligible for: WIC, Headstart, Child Health Plus Insurance, medical care for pregnant women and treatment for emergency medical conditions, immunizations and in kind disaster relief.
- US Born Children of Undocumented immigrants are citizens and eligible for any public benefit program for which they would otherwise qualify (by age, income level etc)

#### Definitions:

**"qualified aliens"**—federal definition of immigrants qualified for federal benefit programs. Immigrants in nine categories are qualified: Legal Permanent Residents, Refugees, Asylees, aliens granted conditional entry, aliens paroled to the US for at least one year; victims of human trafficking, aliens whose deportation is being withheld, battered alien children and spouses, Haitian and Cuban refugees.

**"naturalization"**—process of becoming a US citizen. Candidate must be 18 years old, a legal permanent resident for five years, pass a test on US History and government, speak English and be of good moral character.

**"US Citizenship and Immigration Services" (USCIS)**—administers immigration services and benefits including processing immigrant visas, naturalization petitions and refugee and asylee applications.

**"US Immigrant Customs Enforcement" (ICE)**—federal law enforcement agency under the Department of Homeland Security ; responsible for enforcing immigration and customs laws.

#### Resources for Additional Information

National Immigration Law Center: [www.nilc.org](http://www.nilc.org)

US Citizenship and Immigration Services (USCIS): [www.uscis.gov](http://www.uscis.gov)

Bureau of Refugee and Immigrant Assistance, NYS Office of Temporary and Disability Assistance (OTDA):

<http://otda.ny.gov/programs/bria/programs/asp>

## McKinney-Vento Homeless Education Assistance Act

The intent of the McKinney-Vento Homeless Education Act is for homeless students to have equal access to the same education and services as every other student. Homeless students are to have immediate access to entry into school. The student has the right to attend school in their home district or the district in which they are temporarily residing. Each school district must eliminate any barriers to immediate access for homeless students. These barriers may include transportation, records, and parental or legal guardian permission.

McKinney-Vento provisions cover pre-school and school-aged children (through the age of 21 or until the student receives a high school diploma, whichever comes first), and homeless children and youth whether they are with their families or are unaccompanied and living apart from their parents or legal guardian.

### Applicable Laws and Regulations:

McKinney-Vento Homeless Education Assistance Act, 42 USC §§ 11431 et seq.

The Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1400 et seq.

Federal Regulations: 34 CFR Part 300

N.Y. Education Law § 3209

Regulations of the Commissioner of the State Education Department: 8 NYCRR § 100.2(x)

### Definition: Homeless

Children and youth who don't have a fixed, adequate and regular nighttime residence, such as those living:

- in an emergency or transitional shelter.
- with friends or relatives due to loss of income or economic hardship (doubled up).
- in a motel, hotel or campground.
- in a car, bus, train station or other public place.
- in an abandoned building or other inadequate accommodations.
- in temporary housing awaiting foster care placement.

If the living arrangement does not meet all three criteria (fixed, regular, and, adequate), per McKinney-Vento, it is considered a homeless situation.

The examples listed above describe some of the more common situations of homelessness but are not inclusive of all possible homeless situations.

### Where can homeless children and youth go to school?

McKinney-Vento recognizes that students who transfer schools often do worse than students who don't transfer and offers the homeless student and their parent/guardian a choice for the student to attend:

- the school they went to when permanently housed (school of origin).
- the last school they went to (also known as school of origin).
- any school that permanently housed students living in the same attendance zone as the homeless student may attend.

### What educational rights do homeless children and youth have?

- Enroll in school and attend classes immediately even if they don't have documents usually needed for enrollment (e.g. birth certificate, proof of residence, immunization records).
- Enroll in school and attend classes immediately, even if they don't have a parent/guardian with them to register in cases where the student is an unaccompanied homeless youth or a runaway youth.
- Receive transportation to school of origin, even if it is in another district. Transportation is not to exceed fifty miles each way unless the commissioner certifies that transportation in excess of fifty miles is in the best interest of the child.
- Receive special education services, including transportation services, even if the Individual Education Plan (IEP) is from another

district or is not immediately available.

- Participate in all school activities and programs that permanently housed children do (sports, gifted and talented, enrichment and tutoring programs, preschool, after school programs) and receive transport for such activities.
- Receive free school meals without filling out an application.

### Who decides where a youth will attend school? Who can sign the designation form?

- Parents, legal guardians, and persons in parental relation.
- Youth who are 18 or older.
- Unaccompanied youth.
- Directors of residential Runaway Homeless Youth (RHY) programs.

### Who can consent for special education evaluations and services for a homeless student?

- Parent, foster parent, guardian.
- Person who is acting in the place of a parent and with whom the child is living; this person can be a non-relative.
- Person legally responsible for the child.
- A surrogate parent appointed by the school district in cases where none of the above listed individuals are available.
- A temporary surrogate parent, who doesn't have to be appointed by the district and can be an employee of an RHY program or the school district, in cases where an unaccompanied homeless youth needs a surrogate parent but a surrogate has not yet been appointed.

### Who can sign other school-related consent forms for students who are homeless?

- Parent.
- Legal guardian.
- Youth if she or he is 18 or older.

In cases of unaccompanied homeless youth who are not 18 years or older, schools must take steps to eliminate any barriers to their full participation in school. To the extent that a parental consent form prohibits an unaccompanied homeless youth from fully participating in school (e.g. field trips, participation in sports activities), the school should work with the youth to develop an exception to school policy consistent with the mandates of the McKinney-Vento Act.

### Are there confidentiality requirements for the education records of homeless children and youth?

Federal and State laws- FERPA, IDEA and NYS Education Law- governing the confidentiality of student records and student/family personally identifiable information also apply to the records and information for homeless children and youth as they would for any student. McKinney-Vento has no specific references to confidentiality.

### Who can help homeless families and youth get enrolled in school and assure there are no barriers to education access?

Every school district has a designated liaison, referred to as the Local Education Agency (LEA) liaison, who is responsible for helping homeless children and youth.

### Resources for additional information:

New York State Technical and Education Assistance Center for Homeless Students (NYS:TEACHS)  
[www.nysteachs.org](http://www.nysteachs.org)

New York State Education Department, Homeless Education Program Manager, (518) 473-0295

National Center for Homeless Education (NCHE)  
[www.serve.org/nche](http://www.serve.org/nche)