



Advocates for Children of New York

Tips for Working with Children of Incarcerated Parents

Many education laws and policies can help support children with incarcerated parents. This handout summarizes several that may be relevant to your work. It also includes information on how you can locate and communicate with parents in correctional facilities to involve them in their child's education. Please refer to Steps 2 and 3 below for details.

Students in Temporary Housing

The McKinney-Vento Homeless Assistance Act is a federal law that grants important educational rights to students in temporary housing. Students are considered “homeless” under the Act when they lack a nighttime residence that is “fixed, regular and adequate.” If a child is temporarily living with others because of parental incarceration, he or she may be eligible for protections under McKinney-Vento. These protections include:

- The right to enroll in the local school or remain in the student's school of origin
- The right to immediate enrollment and full participation in school, even without the documents normally required of permanently housed students
- The right to transportation back to the school of origin
- Automatic eligibility for free breakfast and lunch
- Access to Title 1 services
- Assistance from the school district's students in temporary housing liaison

If you have questions about a student's eligibility under McKinney-Vento or need help accessing services for a student, contact the Student in Temporary Housing Content Expert for the borough where the child attends school. A list of Content Experts is available on the Department of Education's (DOE's) [website](#). You can also call the New York State Technical and Education Assistance Center for Homeless Students at 1-800-388-2014.

Students with Special Education Needs

Whenever a child is referred for an evaluation or receives an initial recommendation for special education services, and prior to the annual review of a student's IEP, the school, CSE or CPSE must determine who the “parent” is so they can begin outreach efforts to contact the parent. This handout will help determine when the DOE is legally required to reach out to an incarcerated parent on special education matters and how to get in touch with a parent who is incarcerated.

Please note that the law makes a distinction between a parent who is *incarcerated but has not yet been sentenced*, and a parent who has been *sentenced and imprisoned*. These differences will be discussed more fully below.

STEP 1: Determine who has the right to make special education decisions for the child

For the purposes of special education decision making, the term “parent” means:

- A birth or adoptive parent;
- A legal guardian;
- A person in parental relation to the child;
- An individual designated as a person in parental relation;
- A surrogate parent; or
- A foster parent (only if the child’s birth parents are deceased, or parental rights have been terminated or surrendered).

The term parent does **not** include an employee of any agency involved in the education or care of the student when the student is a ward of the state. This means that employees of the Administration for Children’s Services (ACS), a foster care agency or other social service agency may not consent to special education evaluations or services for a child in their care.¹

Section 3212 of state Education Law addresses situations where a parent is imprisoned. According to the legal definition of “person in parental relation,” the term includes:

- A father or mother, by birth or adoption;
- A step-father or step-mother;
- A legal guardian; or
- **A custodian:** a person who has assumed the care of a child because the child’s parents
 - Have died, are **imprisoned (sentenced)**, or are mentally ill;
 - Have been committed to an institution;
 - Have abandoned the child, are living outside the state, or their whereabouts are unknown; or
 - Have designated the person as a person in parental relation to the child.

When a **child is in foster care** and the birth or adoptive parent is imprisoned but parental rights are still intact, the parent retains the authority to make education decisions about his or her child. Under the law, the foster parent is not considered to be a custodian or person in parental relation to the child. Outreach efforts to the incarcerated parent are required unless the parent’s rights have been terminated or surrendered.

When a **child is not in foster care** and is living with someone else because the birth or adoptive parent is **imprisoned**, the DOE is not required to contact the parent, although schools may want to in some cases. The child’s caregiver may be considered the custodian and can sign necessary consents. Legally, a parent is “imprisoned” when he or she has pled guilty to or been convicted of a crime and been sentenced to serve time in a correctional facility. If the parent is incarcerated but has not yet been sentenced – that is, he or she is awaiting trial, or the trial is in progress – the DOE **must** contact the parent. Step 2 below contains information on how to determine if a parent has been sentenced.

¹ For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as **temporary** surrogate parents until a surrogate parent with appropriate qualifications can be appointed.

NOTE: Even if the child’s caregiver has authority to sign consent as a custodian, it may be in the child’s best interest to reach out to the incarcerated parent to involve him or her in educational planning for the child. You may want to speak to the caregiver to gain a sense of the parent’s involvement.

STEP 2: Locate the incarcerated parent and determine if he or she is “imprisoned”

To locate an incarcerated parent, you will need the parent’s name, particularly the last name, and his or her date of birth or year of birth, if known. If a parent has been incarcerated under an alias, it is helpful to know the alias; you may still be able to locate the parent with a date of birth.

Once you have the parent’s name and date of birth, you can go online to determine the facility where the parent is incarcerated and the contact information for the facility. The website <http://www.theinmatelocator.com> has links to all online locators within the federal, state, and local systems. You may need to check all three systems in order to find the parent. Once you locate the parent, you will be able to access the address and phone number for the facility.

Local Correctional Facilities (including New York City & Rikers Island)

Parents incarcerated in New York City correctional facilities are given a New York State Identification (NYSID) number. Include this number on any correspondence sent to the parent. The New York City website will also indicate whether the parent has been sentenced, and is therefore imprisoned. If the county doesn’t have an online locator, call the facility directly.

New York State Correctional Facilities

Parents incarcerated in a NY state correctional facility are given a Department Identification Number (DIN#). Include this number on any correspondence sent to the parent. **If you locate a parent in the NY state system, then the parent has already been sentenced and is considered imprisoned.**

Federal Correctional Facilities

Parents incarcerated in a federal correctional facility are given a Register Number. Include this number on any correspondence sent to the parent. In order to find out if a parent has been sentenced, call the correctional facility where the parent is located and ask to speak with the parent’s correctional counselor.

NOTE: If the parent cannot be located in any of the correctional facilities, the DOE may need to appoint a surrogate parent for the child. Contact the Surrogate Parent Liaison at the Children First Network or CSE for more information.

STEP 3: Contact the incarcerated parent

When incarcerated parents have not been sentenced, and for many incarcerated parents whose children are in foster care, schools are **required** to contact the parent to involve them in special education decision-making. Attempts should be made to contact the parent by mail and by phone. You may want to contact incarcerated parents in other situations as well.

Within Local or NY State Correctional Facilities

Once you have located the parent, call the facility and ask to speak with the parent’s correctional counselor. A list of counselors at each of the jails on Rikers Island is attached. Explain who you are and why you are trying to reach the parent. The correctional counselor should be able to set up a conference call, receive faxes, and/ or arrange for a notary for the parent. If you are having trouble reaching or working with the correctional counselor, ask to speak with the senior guidance counselor

or the Deputy Superintendent of Programs (DSP). To reach the DSP at a state facility, dial the facility's main number, followed by extension 4000.

Within Federal Correctional Facilities

Call the facility and ask to speak with the parent's correctional counselor. Correctional counselors are assigned alphabetically based on the last name of the parent. Explain who you are and why you are trying to reach the parent. The counselor should be able to help facilitate communication with the parent.

There are federal detention centers throughout the state, but parents in the federal system may be placed in an out-of-state facility as well. Once you locate a parent, have his or her name, commitment number (if you have it), and date of birth handy when you call.

NOTE: Communication with a parent in a federal correctional facility can be very difficult, especially outside of New York City. If a school is having trouble finding someone to help work with the parent, contact the appropriate Surrogate Parent Liaison immediately.

Designating a person in parental relation

In some cases, an incarcerated parent may want to designate someone else to make health or educational decisions on his or her behalf.² The parent can revoke the designation at any time. This designation must be in writing, signed by the parent, and dated, and must include the name of the parent, child, and the designee. Designations for a period of more than 30 days must also:

- Include an address and phone number for the parent and the designee;
- Include the child's date of birth;
- State the date or event upon which the designation begins;
- Contain the written consent of the designee and a statement that no court order currently in effect prohibits the parent from making the designation; and
- Be notarized.

A designation that meets all of these requirements will be effective for 180 days, unless a shorter period is specified. A period longer than 180 days (six months) may not be specified, so it may be necessary for an incarcerated parent to complete a designation more than once. Once the designation period expires, the right to make health or educational decisions will return to the parent. A sample designation form is attached.

Access to Records

The Family Educational Rights and Privacy Act (FERPA) grants all parents access to their child's school records unless a court order or other legal document specifically revokes these rights. The term "parent" means a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian. In New York City, all non-custodial parents, including incarcerated parents, have the right to review their child's educational records unless a judge has ruled otherwise. Schools can mail records to the parent (make sure to include the appropriate identification number), or in some circumstances may fax them to the parent's correctional counselor. Please refer to [Chancellor's Regulation A-820](#), which is available on the DOE website, for further information.

² A parent's right to designate someone as a "person in parental relation" comes from Article 5, Title 15-A of the General Obligations Law. That person (the "designee") would then fit the definition of parent included in Part 200 of the regulations of the State Education Department, which are summarized above in Step 1.

Roster of DOC Correctional Counselors (Rikers)

NAME	PHONE	TOUR	FACILITY
Efrain Quintana	(718) 546-3486	8:00x 4:00 M-F	AMKC
Lawrence Welsh	(718) 546-5804	8:00x 4:00 M-F	EMTC
Warren Berry	(718) 546-4749	8:00x 4:00 M-F	GMDC
Mindy Williams	(718) 546-2245	8:00x 4:00 M-F	GRVC
Julia Diatloff	(718) 546-1233/1214	8:00x 4:00 M-F	NIC/Annex
James Lyles	(718) 546-6441	8:00x 4:00 M-F	OBCC
Kimfaye Hairston	(718) 546-7757	8:00x 4:00 S-T	RMSC
Carol Hakim	(718) 546-7098	8:00x4:00 M-F	RNDC
Salathia Nixon	(718) 546-7087	8:00x4:00 M-F	RNDC

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Designation of Person in Parental Relation for Purposes of Educational Decisions

Child's Name: _____ Child's DOB: ___/___/___

I, _____, am the parent of the above-named child.
Print Full Name

I understand that under the provisions of the Individuals with Disabilities Education Act, the New York State Education Law and the regulations of the New York State Education Department, I have the right to make educational decisions for my child. I also understand that I may voluntarily designate another person to act for me as a person in parental relation to make decisions regarding my child's education. I further understand that I may revoke this designation at any time, either orally or in writing, by notifying the designee or an educational provider at my child's school, or by executing a subsequent designation. There is no prior order of any court in any jurisdiction currently in effect that would prohibit me from making this designation.

In accordance with Section 5-1551 of the General Obligations Law, I am designating

_____ as a person in parental relation to my minor child.
Designee's Full Name

Designee's Address: _____ Apt. No.: _____

_____ Zip Code _____
City or Town State

Designee's Telephone Number: Home _____ Cell _____
Work _____

Parent's Address: _____ Apt. No.: _____

_____ Zip Code _____
City or Town State

Parent's Telephone Number: Home _____ Cell _____
Work _____

Date designation begins: _____

If not a specific date, event that will start the designation: _____

Length of Designation (no more than six months): _____

Parent Signature Date

Executed before me this _____ day of _____, 20_____

Notary Public

Consent of Designee to Act as a Person in Parental Relation for Purposes of Educational Decisions

Child's Name: _____ Child's DOB: ____/____/____

I, _____, consent to the designation by _____ to
Name of Designee Name of Parent
act as a person in parental relation to the child listed above for purposes of educational decisions.

Signature of Designee

Date

Executed before me this _____ day of _____, 20____.

Notary Public