

April 17, 2020

As a charter school authorizer and in line with best practice, CSI is responsible for implementing an accountability system that evaluates CSI schools' academic, financial, and operational performance (e.g., "CARS"). As one component of measuring operational performance and to help ensure compliance with local, state, and federal requirements, CSI has developed the annual Organizational Submissions and Audits process.

The Organizational Submissions and Audits process intends to evaluate each school's compliance with key laws, regulations, policies, and contract provisions, and looks to ensure that minimum requirements are being met while still protecting a school's autonomy. The submissions may change from year to year depending upon changes in law, rule, or policy. CSI has drafted and compiled resources to assist CSI schools in meeting minimum requirements. Enrollment policies and registration processes are included in the annual Audits process for all CSI schools.

[Audit Advisory](#)

CSI has created this Advisory Bulletin on Enrollment Records to ensure compliance with all applicable laws, rules and regulations as it relates to student records during the enrollment process. All CSI Schools should review their enrollment policies and practices to ensure compliance with the information listed in this Bulletin as well as the additional relevant resources included on the Resource Site. The CSI Legal and Policy Team will conduct periodic audits of all CSI School's websites to ensure compliance with the information contained and provide feedback and compliance notices as appropriate.

[Overview](#)

The following is provided for informational purposes only and is not to be construed as legal advice or formal legal opinion on the behalf of the author or CSI. Use of this information does not create an attorney-client relationship, nor is the creation of such relationship intended by the provision of this information. This information does not constitute a formal administrative opinion on behalf of CSI. CSI recommends that each school contact its attorney to obtain legal advice with respect to any particular issue.

Please Note: When referring to "parent" throughout this advisory bulletin, a parent(s) shall include a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. See 34 C.F.R. § 99.3.

1. Requiring a student birth certificate to establish student age

- a) CSI Schools cannot discriminate against students on the basis of citizenship status. 42 U.S.C. § 11432(g)(3)(C)(i). To that end, and in accordance with federal regulation and guidance, CSI Schools may not prevent or discourage a student from enrolling or attending school because s/he lacks a birth certificate to prove student age; other documents may be used including baptismal certificates, passport, hospital and/or physician signed health records, etc.¹

¹ Documents used to prove age or residency may include baptismal certificates, passport, hospital and/or physician signed health records, an application for a social security number, original school registration records, a letter from an authorized representative of an agency having custody of the student, or an affidavit explaining the inability to provide a copy of the birth certificate.

- b) Additionally, CSI Schools may not include language in registration packets and websites which states that spots will not be saved and enrollment may be forfeited if a birth certificate is not received as this can be viewed as a barrier to enrollment based on citizenship status.

2. Requesting information about citizenship status to establish residency

- a) CSI Schools cannot discriminate against students on the basis of citizenship status. 42 U.S.C. § 11432(g)(3)(C)(i). To that end, and in accordance with federal regulation and guidance, CSI Schools may not ask or require parents to disclose or document their citizenship or immigration status to establish residency.
- b) Additionally, CSI Schools may not prevent or discourage a student from enrolling in or attending school because s/he has records that indicate a foreign place of birth, such as a foreign birth certificate. 42 U.S.C. § 11432(g)(3)(C)(i). See Fact Sheet: Information on the Rights of All Children to Enroll in School (2014)
<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>.

3. Requiring a birth certificate and other school records for enrollment² of homeless students

- a) CSI Schools cannot create policies or practices that may act as a barrier to the identification, enrollment, attendance and success of homeless students.³ 42 U.S.C. 11435(2). To that end, and in accordance with federal regulations and guidance, CSI Schools may not deny a homeless child enrollment because s/he cannot provide the required documents to establish residency and/or any other required enrollment documents such as proof of age, immunizations and previous school records. A homeless student is one that meets the requirements of the McKinney Vento Act, reauthorized in 2015 by Title IX, Part A of the Every Student Succeeds Act and the definition of a homeless child pursuant to C.R.S. 22-1-102.5.
 - **C.R.S. 22-1-102.5**
 - (2) (a) As used in this article, unless the context otherwise requires, "homeless child" means:
 - (I) A school-aged child who lacks a fixed, regular, and adequate nighttime residence, including but not limited to:
 - (A) A child who is living in a motel, hotel, or camping ground due to a lack of alternative adequate accommodations;
 - (B) A child who is living in an emergency or transitional shelter;
 - (C) A child who is abandoned in a hospital; and
 - (D) A child awaiting foster care placement; or
 - (II) A school-aged child who has a primary nighttime residence that is:
 - (A) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations,

² Enrollment vs Registration vs Admission: Admission is the first stage in any student's access to a school as this is the point at which a school offers a spot/seat for a student to attend the school. See [Enrollment FAQ](#) Question 12. This includes the school's Intent to Enroll forms. The next stage is enrollment in which the school gathers information about a student. [Id.](#) Registration is the stage in which the school enrolls the student in classes and the school's student information system.

³ Colorado is required to have a coordinator for the education of homeless children and youth. Every CSI school is required to have a [liaison](#) for homeless students which will assist the School, students and families with the implementation of the McKinney-Vento Act. The Colorado Coordinator can be found [here](#).

including welfare hotels, congregate shelters, and transitional housing for persons with mental illness;
(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or
(C) A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings, including but not limited to an automobile, a park, an abandoned building, a bus or train station, or a similar setting.

(b) "Homeless child" shall not include any individual imprisoned or otherwise detained pursuant to an act of congress or a state law.

(c) "Homeless child" shall include a migrant school-aged child who meets the requirements of this subsection (2).

(d) "Homeless child" shall include a school-aged child who meets the requirements of this subsection (2) who is not in the physical custody of a parent or legal guardian.

4. Requiring a government issued ID or Social Security Card for parent(s) and/or student

- b) CSI Schools cannot discriminate against students and/or parent(s) on the basis of citizenship status. 42 U.S.C. § 11432(g)(3)(C)(i). To that end, and in accordance with federal regulations and guidance, CSI Schools may not require parents to provide a government-issued ID or a Social Security number for themselves or their children in order to enroll in or attend school. See [Fact Sheet: Information on the Rights of All Children to Enroll in School \(2014\)](#).

5. Requesting information about students IDEA and 504 status prior to admission

- a) CSI Schools cannot discriminate against students on the basis of need for special education services. C.R.S. 22-30.5-507(3). To that end, and in accordance with federal regulations and guidance, CSI Schools generally cannot inquire as to disability status of a student prior to admitting the student (unless for purposes of required remedial action, weighted lottery, or the school is chartered to serve students with a particular disability). This includes Intent to Enroll forms⁴ as well as the registration packet if the information is required to be considered "admitted" to the school. See 34 C.F.R. §§ 104.4(b)(1)(ii), (iv), (4); § 104.6(a)-(b) and "[Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973](#)", Questions 16-17. Enrollment of students with disabilities must be in accordance with [CSI's Enrollment Procedures for Students with Disabilities](#). [Know Your Rights: Students with Disabilities in Charter Schools, U.S. Department of Education, Office for Civil Rights \(2016\)](#).
- i. During the **enrollment** stage, CSI Schools can request IEPs and 504 plans pursuant to [CSI's Enrollment Procedures for Students with Disabilities](#).

6. Requiring a Home Language Survey prior to enrollment

- a) CSI Schools cannot discriminate against students on the basis of citizenship status. 42 U.S.C. § 11432(g)(3)(C)(i). To that end, CSI Schools should not include language in registration packets and websites which states that spots will not be saved and

⁴ Intent to Enroll forms should collect only very basic information for students such as name, grade level entering, parent name and contact information. Intent to Enroll forms cannot ask about disability status or status as another protected class unless it is for purposes of a weighted lottery or program designed to serve students with a particular disability.

enrollment may be forfeited if a Home Language Survey is not received as this can be viewed as a barrier to enrollment based on ability and citizenship status; it is highly recommended that all paperwork note that this document is only being requested by the School and is not required until after a student has secured enrollment to the school.

7. Requesting Custody Records, Parenting Plans, etc.

- a) When requesting enrollment documents from parent(s), CSI Schools typically request information pertaining to custody if parent(s) indicate the student lives in two separate households. Parent(s) provide a wide range of documents to support split households with many different names including; divorce decrees or dissolution paperwork, guardianship documentation, custody orders, custody arrangements, paternity proceedings, etc.
 - CSI School's should be aware that these documents, for the most part, are only effective for a certain period of time; meaning they are not valid in perpetuity. Additionally, parent(s) may go to court as frequently as they wish to make changes and/or amendments to these documents. Therefore, if there is a question about whether a document is still valid or if a parent tells a school that the document on file is no longer current, consider requesting a copy of the new document. Make sure to let the parent(s) know that the school will continue to adhere to the current document on file until a new document has been provided and reviewed by the school to ensure implementation of the orders contained therein.
- b) CSI School's **should remain neutral** in all custody disputes and should convey this to **each** of the student's parents.
 - CSI Schools should have a policy in place, approved by their boards, that addresses how they want staff to address these concerns. Consider the following:
 - Do you want your staff to be involved and/or participate in court proceedings?
 - This includes writing letters of support and/or testifying in court.
 - **Please remember** that staff may be compelled to testify through a subpoena but the School's policy should address voluntary involvement and participation.
- c) Custody vs. Educational Rights
CSI Schools frequently ask what the difference is between custody vs. educational rights when it comes to the rights of parent(s) and their student. Please consult the school's legal counsel for more in-depth questions. Included here is a brief overview of the difference.
 - i. **Educational Rights:** Both parents should be given full access to their student's educational record under FERPA, regardless of custodianship, unless there is a court order or other legally binding document and/or a state statute that would prohibit the access.⁵ This includes any valid legally binding document that removes a parent's ability to access information about their student's education.

⁵ See [Exhibit 5-1, Rights of Non-Custodial Parents in the Family Educational Rights and Privacy Act of 1974, National Center for Education Statistics, https://nces.ed.gov/pubs97/p97527/Exh_5_1.asp](https://nces.ed.gov/pubs97/p97527/Exh_5_1.asp).

- ii. **Custody Rights:** Custodial rights are those bestowed upon a parent that determine where a student lives (i.e. in which household). Custodial rights do not affect FERPA rights of either parent unless an exception applies as described above.⁶ See 7(c)(i).

References

- C.R.S. 22-30.5-507(3) (Institute Charter School Requirements)
- C.R.S. 22-1-102.5. (Colorado definition of homeless child)
- 34 C.F.R. § 99.3 (FERPA definitions)
- 34 C.F.R. § 99.4 (FERPA rights)
- 34 C.F.R. §§ 104.4(b)(1)(ii), (iv), (4); § 104.6(a)-(b) (Rights of Students with Disabilities)
- 42 U.S.C. § 11432(g)(3)(C)(i) (Rights of All Children to Enroll in School)
- 42 U.S.C. § 11435(2) (McKinney Vento Act)

If you have any questions, please contact the CSI Legal and Policy Team: Legal and Policy Associate, Stephanie Aragon (stephaniearagon@csi.state.co.us).

⁶ *Id.*