

# Immigration and Schools: Supporting Success for Undocumented and Unaccompanied Homeless Youth

Kids in Need of Defense

National Association for the Education of Homeless Children and Youth

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*Building futures through education*

*“D” was a distinguished student at a prestigious high school, enrolled in Advanced Placement and Gifted and Talented classes. She graduated and won a scholarship to fund part of her college education. However, after beginning her first semester, she realized that she was not eligible for any public financial aid. Although she had been homeless and met all the need- and merit-based criteria for aid, she lacked lawful immigration status.*

*A few weeks into college, D realized she would have to drop out.*

## INTRODUCTION AND OVERVIEW

Attending school and securing lawful status in the United States are two keys to safety and security for undocumented unaccompanied homeless youth.

This brief is designed to provide young people, immigration attorneys and advocates, McKinney-Vento liaisons and educators with basic information to help them access these keys. After describing some of the factors that cause youth to experience homelessness without a parent or guardian and the circumstances that result in immigrant youth being in the United States without their parents or guardians, the brief shares information about the federal laws that provide the means for youth to attend school and address their immigration status.

Some of these laws are very complex, and this document does not provide comprehensive information. Before seeking to enforce these rights, youth, educators and advocates should seek professional support through the resources offered at the end of the brief.

*D lost her housing in September of her senior year of high school. She slept in subway stations and buses and on classmates' couches. She often went without food at night and on weekends. Yet, she continued to earn As and Bs and complete extra-credit assignments at school. Her teachers encouraged her.*

## UNACCOMPANIED YOUTH IN THE CONTEXT OF HOMELESSNESS

Many young people confront the dangers and challenges of homelessness without the care of a parent or legal guardian. Education law refers to these youth as unaccompanied homeless youth. Youth find themselves homeless and unaccompanied for several reasons. Some youth become homeless with their families, but end up on their own due to lack of space in temporary accommodations or shelter policies that prohibit teenage boys. As a result, 60% of homeless mothers live apart from at least one of their minor children; 35% live apart from all their children.<sup>1</sup>

Furthermore, between 1.5 and 1.6 million youth run away from home or are forced out of their homes by their parents each year.<sup>2</sup> Many of these young people suffered abuse in their homes; studies have found that 20-40% of unaccompanied youth were sexually abused in their homes, while 40-60% were physically abused.<sup>3</sup> Others faced severe dysfunction at home, including parents, stepparents or other adults abusing drugs or alcohol or engaging in illegal activities.<sup>4</sup> In other cases, parents forced youth to leave home as a punishment for becoming pregnant or revealing they are gay, lesbian, bisexual or transgender.<sup>5</sup>

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<sup>1</sup> Toro, P., Dworsky, A., & Fowler, P. (2007). "Homeless Youth in the United States: Recent Research Findings and Intervention Approaches." *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research*. Washington DC: US Departments of Health and Human Services and Housing and Urban Development.

<sup>2</sup> The 1,729 school districts nationally that receive McKinney-Vento subgrants are required to report data on the number of unaccompanied youth enrolled in their schools. During the 2008-2009 school year, those school districts counted 52,950 enrolled unaccompanied youth. While these data are important, they grossly underestimate the number of unaccompanied youth, since they only report youth enrolled in 11% of the nation's over 15,000 school districts.

<sup>3</sup> Hammer, H., Finkelhor, D., & Sedlak, A. (2002). "Runaway / Throwaway Children: National Estimates and Characteristics." *National Incidence Studies of Missing, Abducted, Runaway, and Throwaway Children*. Washington DC: Office of Juvenile Justice and Delinquency Prevention. See also Greene, J. (1995). "Youth with Runaway, Throwaway, and Homeless Experiences: Prevalence, Drug Use, and Other At-Risk Behaviors." *Research Triangle Institute*. Washington DC: U.S. Dept. of Health and Human Services.

<sup>4</sup> Over two-thirds of callers to the National Runaway Switchboard report that at least one of their parents abuses drugs or alcohol. National Runaway Switchboard, <http://www.1800runaway.org>.

<sup>5</sup> Many youth have been thrown out of their homes due to their sexual orientation: 20-40% of unaccompanied youth identify as gay, lesbian, bisexual or transgender (compared to 3-5% of adults). The National Gay and Lesbian Task Force and the National Coalition for the Homeless (2007). *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*. Washington DC: Authors. In addition, 48% of street youth have been pregnant or impregnated someone, and 10% of currently homeless female teenagers are pregnant. Toro et al. (2007).

These various causes of youth homelessness exist in every community. Federal law requires every school district in the country to designate a McKinney-Vento homeless liaison, who identifies and reports data on homeless children and youth in the district, as well as ensures these youth can enroll in and attend school and receive support to succeed.<sup>6</sup> The data reported by liaisons confirm that homeless youth can be found in small towns and suburbs, as well as big cities.<sup>7</sup> Unaccompanied youth live in a variety of temporary situations, including shelters, sharing the homes of other people, cars, campgrounds, public parks, abandoned buildings, motels, and bus or train stations. Unable to return home safely, these young people move from one homeless situation to another, without the support and protection of a parent or guardian.

*D escaped to the United States, leaving behind a father who beat her, shaved her hair and placed her in an oven. On the journey she was assaulted by the smugglers who brought her to the U.S., and upon arriving she sought out family members who could help her pay the smugglers' fee. D came to this country seeking safety and the chance to break her family's cycle of poverty and abuse.*

## UNACCOMPANIED YOUTH IN THE CONTEXT OF U.S. IMMIGRATION LAWS

Each year more than 8,000 undocumented unaccompanied youth<sup>8</sup> are placed into the custody of the United States Department of Health and Human Services.<sup>9</sup> Many of these children – who come to the U.S. without a parent or legal guardian – are apprehended by U.S. officials soon after crossing into the United States, while others are apprehended in the interior of the U.S.. An unknown number of additional young people come alone to

<sup>6</sup> 42 U.S.C. §§11431-11435. For more information, see “Access to School” and “Resources” later in this document.

<sup>7</sup> National Center for Homeless Education (2010). *Education for Homeless Children and Youth Program: Data Collection Summary*. Washington, DC: U.S. Dep't. of Education.

<sup>8</sup> While this document refers to “undocumented unaccompanied youth”, the correct legal designation is “unaccompanied alien child,” defined under the Homeland Security Act of 2002 as a child who: has no lawful immigration status in the United States; has not attained 18 years of age; and has no parent or legal guardian in the United States available to provide care and physical custody.

<sup>6</sup> U.S.C. §279(g). This definition encompasses youth who are separated from their parents or guardians, but who are in the informal care and physical custody of other adults, including family members who are not their parents or legal guardians. A youth who entered the United States with a parent or other adult guardian but subsequently left the parent's or guardian's care could also be considered an unaccompanied alien child by some advocates, but not necessarily under immigration law.

<sup>9</sup> In 2007, the Department of Health and Human Services had custody of 8,227 unaccompanied undocumented youth. Of these youth, 76% were male and 24% female; 85% were between the ages of 14 and 18. Three countries—Guatemala, Honduras and El Salvador—accounted for 85% of the UACs detained in Office of Refugee Resettlement (ORR) custody. Chad C. Haddel, *Unaccompanied Alien Children: Policies and Issues*. Congressional Research Service (CRS) Report. January 15, 2009.

the U.S. and are not known to U.S. officials. They live in urban, suburban and rural communities across the United States.

The reasons youth come alone to the U.S. and their journeys here vary. Many are fleeing persecution, human rights abuses (such as forced military recruitment, forced marriage, prostitution and child labor), torture, physical abuse, sexual abuse, neglect or abandonment.<sup>10</sup> Others are forcibly brought to this country by human traffickers.<sup>11</sup> Some youth arrive in the U.S. without their parents due to family separation resulting from war, while others come to seek stability and safety after natural disasters, such as the devastating earthquake in Haiti in January 2010. Many additional young people have not suffered direct harm or abuse in their home countries, but come to the U.S. in the hopes of reuniting with family or earning income to send home to family members living in desperate poverty.

In addition to those young people who arrive in the United States unaccompanied, other youth come to the U.S. with their parents, only to be separated from them later as a result of abuse, neglect, abandonment, or parental deportation. Many have lived nearly all their lives in the U.S. and are not familiar with the language or culture of their birth country. Yet, they have no legal status in this country.

*D was homeless, undocumented and unaccompanied. How would she enroll in school, work, graduate and attend college?*

## THE KEYS TO SUCCESS: ATTENDING SCHOOL AND SECURING LAWFUL STATUS

When young people like D confront both homelessness and the lack of lawful immigration status, their struggles increase exponentially. They face the challenges of homelessness without a parent or guardian and without the rights and benefits available to United States citizens or lawful permanent residents. For example:

- Without parents to pay for their basic needs, homeless youth must work to pay for food, clothing and shelter; yet, undocumented youth cannot work legally.
- Living in shelters and sleeping in parks, abandoned buildings and public spaces put youth at risk for many chronic and acute health problems; yet, undocumented youth are not eligible for most health insurance and health care services.

<sup>10</sup> Christopher Nugent, "Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children," *Boston University Public Interest Law Journal*, 210, Spring 2006.

<sup>11</sup> *Id.*

- Looking toward their future, these young people want to access higher education so they can be successful, independent adults; yet, they are not eligible for most financial aid for college.

In short, these youth are locked out of the legal fabric of the country where they live. Fortunately, there are tools to help them access two keys to success: education and lawful immigration status.

## ACCESS TO SCHOOL

Undocumented students have the same right to public education as U.S. citizens.<sup>12</sup>

Therefore, school districts are prohibited from requiring U.S. passports, social security numbers, “green cards” or any documentation that would indicate whether a student is a lawful resident or citizen of the United States. In fact, it is illegal for school staff to take any actions that might intimidate immigrants or prevent immigrant students from enrolling in school, including asking about a student’s or family’s immigration status or contacting immigration authorities about students or families who may be undocumented.<sup>13</sup>

*Sometimes, an immigrant student will voluntarily disclose his or her status to a McKinney-Vento liaison, teacher, school counselor, or other educator. In such cases the educator can offer the youth support and can assist the youth in finding immigration advocates who can help the young person secure a pro bono lawyer.*

In addition to the right to enroll in and attend school, immigrant students who are not proficient in English have the right to receive equal educational opportunity despite not being able to communicate fully and effectively in English.

Specifically, school districts are required to properly identify students who need language services and provide programs that meet their linguistic, cultural and academic needs, while not segregating them unnecessarily from English-speaking peers.<sup>14</sup> The Office for Civil Rights (OCR) of the U.S. Department of Education is charged with monitoring

<sup>12</sup> *Plyler v. Doe*, 457 U.S. 202 (1982). This right includes the right to receive appropriate educational services, including, where indicated, special education and related services and gifted and talented services. Immigrant students also have the right to apply for free school meals without providing a social security number.

<sup>13</sup> *Plyler, supra*; *League of Latin American Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995). See also, National School Boards Association and National Education Association (2009). *Legal Issues for School Districts Related to the Education of Undocumented Children*. Washington, DC: NSBA. Although federal law prohibits any person from intentionally concealing, harboring, or shielding a known, undocumented immigrant from detection, this prohibition does not apply to school enrollment or education services and does not prevent educators or others from supporting undocumented students in school or connecting them with community advocates. However, educators and others should not interfere in Immigration and Customs Enforcement actions. 8 U.S.C. §1324(a)(1)(A)(iii)(2005).

school districts' compliance with these requirements.

When immigrant students are also experiencing homelessness, they have additional education rights under a federal law called the McKinney-Vento Act.<sup>15</sup> The law defines “homeless” broadly (see text box), and specifically includes a definition of “unaccompanied youth”, those young people who are experiencing homelessness outside the physical custody of a parent or guardian. The Act does not set an age limit on eligibility; if a youth is otherwise eligible for public education in the state, the McKinney-Vento Act applies.

In brief, the McKinney-Vento Act requires that state departments of education and local educational agencies (school districts) provide students experiencing homelessness with access to school and support their attendance and success. The McKinney-Vento Act provides unaccompanied youth with many education rights, including:

- The right to enroll in school and begin attending immediately, even if they cannot produce normally required documents, such as proof of guardianship, birth certificates, immunization records or proof of residency.<sup>16</sup>

### **Definition of Homeless**

*“The term ‘homeless children and youths’-*  
(A) *means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and*  
(B) *includes—*

*(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;*

*(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));*

*(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and*

*(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).” 42 U.S.C. §11434a(2)*

<sup>14</sup> These legal obligations apply even in schools or classes with only one student without English proficiency.

<sup>15</sup> 42 U.S.C. §§11431-11435. Among other provisions, the McKinney-Vento Act requires states and school districts to eliminate barriers to school enrollment and retention for homeless students and to enroll unaccompanied youth in school immediately.

<sup>16</sup> 42 U.S.C. §11432(g)(3)(C).

- The right to participate fully in school despite lacking a legal guardian or guardianship documents.<sup>17</sup>
- The right to continue attending the same school, even if their temporary living situation is located in another school district or attendance area, if that is in their best interest. Schools must provide transportation.<sup>18</sup>
- The right to receive the assistance of the McKinney-Vento homeless liaison (the coordinator that every school district must designate to ensure the McKinney-Vento Act is implemented in the district). Liaisons must do outreach to identify unaccompanied youth, assist them with school enrollment and refer them to health and other community services.<sup>19</sup>

*The Urban Institute estimates that 65,000 undocumented students graduate from U.S. high schools each year.*

All of these protections apply to immigrant youth who are homeless, without regard to whether they are in the United States legally. However, once students graduate from high school, they often confront barriers to pursuing higher education. While no federal law prohibits the admission of undocumented youth to public or private colleges and universities, certain state and institutional policies erect barriers for undocumented students. South Carolina, for example, bans undocumented students from all public

colleges. The Georgia State Board of Regents voted to ban such students from its top public colleges (effective fall 2011), and state legislation to extend the ban to all public colleges is expected to follow. Many Virginia state colleges require applicants to submit proof of citizenship or legal residency, following a 2003 recommendation by the state attorney general.

Furthermore, students may not be able to finance their education. Youth with lawful immigration status can apply for federal financial aid, even if their parents are undocumented. Unaccompanied homeless youth with legal status can apply for federal aid without parental signatures or income information. However, undocumented students are not eligible for any federally-funded student financial aid, including loans, grants, scholarships, and work-study programs. They are also locked out of state financial aid in most states, as well as most private scholarship funds and foundations. Many state institutions charge undocumented students out-of-state tuition fees, even if the student is a longtime resident of the state. Recently, ten states—Texas, California, New York, Utah,

<sup>17</sup> 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv), (g)(1)(F)(ii). States and school districts have established different procedures for unaccompanied youth's enrollment and educational decision-making. In many states youth make educational decisions on their own behalf; others vest the liaison with that authority or allow adult caregivers to make such decisions. The Federal Education Rights and Privacy Act (FERPA) allows "an individual acting as a parent in the absence of a parent or a guardian" to access a student's education records, thereby permitting schools to discuss educational issues with such caregivers. 34 CFR §§99.3-99.4.

<sup>18</sup> 42 U.S.C. §§11432(g)(1)(J)(iii), 11432(g)(3)(A)-(B).

<sup>19</sup> 42 U.S.C. §11432(g)(1)(J)(ii).



Illinois, Washington, Nebraska, New Mexico, Oklahoma, and Kansas—have passed laws that permit undocumented students to pay in-state tuition rates under certain conditions. Exacerbating all these challenges is the fact that undocumented youth cannot work legally.

Currently, the U.S. Congress is considering the DREAM (Development, Relief and Education for Alien Minors) Act, which would provide undocumented students the ability to obtain work-study and certain student loans (if they qualify) and a means to obtain lawful permanent residence, as well as giving states the right to decide whether to grant them in-state tuition. However at this time, thousands of youth overcome the challenges of being undocumented and homeless, graduate from high school, and find themselves at a dead end.

*D was able to enroll in public school, despite her lack of lawful immigration status and a legal guardian. Although her homelessness forced her to seek shelter out of the school district, she was able to complete her senior year in the same school. The district's McKinney-Vento liaison provided her with bus passes, clothes, free school meals, school supplies and emotional support.*

*However, D was too afraid to disclose her immigration status to the liaison or her teachers. Her tenacity and the support she received at school helped her make it to college, but her immigration status was threatening her continued enrollment.*

## FORMS OF IMMIGRATION RELIEF AVAILABLE TO UNDOCUMENTED AND UNACCOMPANIED YOUTH

Immigrants are people who apply to enter the United States intending to remain permanently.<sup>20</sup> In contrast, non-immigrants come to the U.S. only for a very specific and temporary purpose (e.g., to work, travel or go to school). Individuals who have permission to be in the U.S. and are complying with the terms of their stay are said to be in lawful status. Those who are in the United States without legal permission are said to be without lawful immigration status or without status. They may also be referred to as undocumented. If a person came to the United States legally but overstayed the terms of his or her visa, that person would be out of status.

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<sup>20</sup> See INA §§101(b), 203.

The U.S. Department of Health and Human Services houses the Office of Refugee Resettlement (ORR). ORR's Division of Unaccompanied Children's Services (DUCS) is charged with the custody, care and placement of unaccompanied youth in the U.S.. Youth in DUCS's care can live in a variety of situations, depending on their circumstances, until their immigration case is completed. They may live in a detention facility, group home or shelter, be placed with a foster family, or be released to a guardian or family member. When in the custody of DUCS, youth receive basic services such as education, health care and some mental health care. However, youth who are released to a guardian are no longer eligible for these services through DUCS, as the guardian assumes the responsibility to ensure the youth receives the services she or he needs.

Trafficking victims and some unaccompanied youth who receive a form of immigration relief called Special Immigrant Juvenile Status are eligible to take part in the ORR's Unaccompanied Refugee Minors (URM) program, which provides specialized, culturally appropriate foster care or other licensed care settings according to the child's individual needs. Additional services can include indirect financial support for housing, food, clothing, and medical care, intensive case management by social workers, mental health services, English language training and other necessary resources.

There are many forms of immigration relief available to undocumented youth. An immigration lawyer can help youth determine the best option for them and represent them throughout the process. It is important that youth begin considering their immigration options as early as possible, as some forms of lawful status are available only to youth under 18 years old. Obtaining legal status is usually a complex, lengthy procedure requiring legal assistance, and there is no guarantee of success. The U.S. government does not provide lawyers to children in immigration proceedings. Some organizations that help children find pro bono attorneys to represent them in immigration court are listed in the Resources section at the end of this document.

*Immigration laws are enacted by the U.S. Congress and enforced by the U.S. Department of Homeland Security (DHS). Within DHS, there are three relevant immigration offices:*

- *United States Citizenship and Immigration Services (USCIS) – responsible for providing immigration-related services such as processing applications for immigrant and non-immigrant benefits.*
- *Immigration and Customs Enforcement (ICE) – enforces immigration laws within the U.S.*
- *Customs and Border Protection (CBP) – oversees inspections at ports of entry and monitors the border for illegal entry of persons and contraband.*

*The Department of Justice's Executive Office for Immigration Review (EOIR) adjudicates immigration cases and interprets and administers U.S. immigration laws.*

Some forms of immigration relief available to undocumented youth include<sup>21</sup>:

### Special Immigrant Juvenile Status (SIJS)

Special Immigrant Juvenile Status (SIJS) provides lawful immigration status to unaccompanied youth when a court has found they cannot reunify with their parents due to abuse, abandonment or neglect.<sup>22</sup> Being classified as a Special Immigrant Juvenile enables a child to apply for lawful permanent residency (i.e., a “green card”).<sup>23</sup>

In general, the requirements for SIJS are:

1. The child must be under age 21 and unmarried. However, in many states juvenile court proceedings on behalf of children must be initiated and/or resolved prior to the child’s 18<sup>th</sup> birthday.
2. A state juvenile court must find that the child is dependent upon the court or committed to the custody of a state agency or an individual or entity. A number of scenarios meet this criterion, including: a youth placed into foster care; a youth in juvenile delinquency proceedings who has been placed under the state probation department; and a youth whom the court has placed with a guardian or custodian.
3. The court must find that reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar grounds.<sup>24</sup>
4. The court must find it would not be in the child’s best interest to return to his or her country of nationality (or last residence).

*Although school attendance is not required for any particular path to lawful immigration status, immigration authorities and courts generally look favorably on school attendance and achievement.*

<sup>21</sup> Please note that this list of forms of relief is not comprehensive nor meant to be a substitute for seeking assistance from a lawyer or other legal professional.

<sup>22</sup> INA §101(a)(27)(J), codified at 8 U.S.C. §1101(a)(27)(J).

<sup>23</sup> 8 U.S.C. §1101(a)(27)(J).

<sup>24</sup> SIJS is unique among immigration remedies in that the application process requires a state “juvenile court” to make certain findings. This state court order is a prerequisite to filing for SIJS.

## Asylum

Unaccompanied youth who have suffered persecution in their home country and who fear returning because of such persecution may be eligible for asylum. The youth must be able to demonstrate persecution, or a reasonable possibility of persecution, on the basis of race, religion, nationality, membership in a particular social group, or political opinion.<sup>25</sup> USCIS guidelines encourage asylum officers to consider the effects of a youth's age, maturity, ability to recall events, and potentially limited knowledge of the asylum process when assessing his or her eligibility.<sup>26</sup>

## U Visa

Generally, the U visa is a non-immigrant visa that may be granted for immigrants who (1) have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity, (2) possess credible and reliable information establishing knowledge of the criminal activity, and (3) have been helpful or are likely to be helpful in the investigation of the criminal activity. Note that the qualifying criminal activity must have taken place in the United States, its territories or possessions.<sup>27</sup> The visa is intended to encourage immigrant victims to report crimes to law enforcement without fear of removal from the United States. Once granted a U visa, a youth can apply for lawful permanent residence.

*Children under age 16 are not required to cooperate with the investigation/prosecution as long as a parent, guardian or "next friend" provides the required assistance.*

A U visa applicant must provide a certification from local, state, or federal law enforcement officials<sup>28</sup> that the applicant is being, has been or will be helpful in the investigation or prosecution of the crime. It is not necessary for the police to be involved or for criminal

<sup>25</sup> INS v. Cardoza-Fonseca, 480 U.S. 421, 438-39 (1987).

<sup>26</sup> See USCIS Asylum Division, AOBTC Lesson Plan: Guidelines for Children's Asylum Claims – March 21, 2009, found at: [http://www.uscis.gov/files/article/AOBTC\\_Lesson\\_29\\_Guidelines\\_for\\_Childrens\\_Asylum\\_Claims.pdf](http://www.uscis.gov/files/article/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims.pdf)

<sup>27</sup> The general U visa provisions are found at INA §101(a)(15)(U); 8 U.S.C. §1101(a)(15)(U).

<sup>28</sup> Keep in mind that "law enforcement officials" is broadly understood to include traditional law enforcement agencies or other agencies that have criminal investigative jurisdiction in their respective areas of expertise, e.g., Child Protective Services, Equal Employment Opportunity Commission, or the Department of Labor.

charges to be filed. For example, if a report of child abuse or maltreatment is being investigated by a local department of social services in the civil context, and the facts of the investigation are such that they constitute domestic violence (a U visa-eligible crime), the child may be eligible for a U visa even if the police are never involved.

## Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA)<sup>29</sup> allows immigrant victims of domestic violence to seek lawful permanent residence in the United States, when the abuser is a U.S. citizen or a legal permanent resident. In general, a youth who was abused can apply directly if he or she lived with the abusing parent or stepparent, is unmarried and is under age 21.<sup>30</sup> In addition, a parent who was abused can include her child as part of her application.

## T Visa

Victims of human trafficking can apply for a T visa, which in turn permits them to apply for legal permanent residence.<sup>31</sup> This includes sex trafficking in which a commercial sex act is induced by force, fraud or coercion or in which the person induced to perform such act has not attained 18 years of age, as well as the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud or coercion for the purposes of subjection to involuntary servitude, debt bondage or slavery.

## Temporary Protected Status (TPS)

Temporary Protected Status (TPS) is a temporary immigration status granted to eligible nationals of designated countries experiencing temporary negative conditions, such as armed conflict or a natural disaster, which make it difficult for the nationals to return to their home country in safety.<sup>32</sup> To apply for TPS, a youth must have been in the U.S. when the home country received TPS designation.

<sup>29</sup> The VAWA was passed as part of the Violent Crime and Law Enforcement Act of 1994. Since the original enactment, the VAWA immigration provisions have undergone several amendments, and are codified principally at INA 204(a), 8 U.S.C. §1154(a).

<sup>30</sup> VAWA 2005 provides that someone who was the victim of incest when s/he was the child of a USC or LPR may file a self-petition up until the age of 25, as long as the abuse was a reason for the filing delay. See VAWA 2005 Pub. L. No. 109-162 Title VIII Subtitle A Sec. 805(c).

<sup>31</sup> Named for subsection (T) of 8 U.S.C. §1101(a)(15) where the relevant provisions are codified. In 2000, the Victims of Trafficking and Violence Protection Act established the T visa for victims of severe forms of human trafficking.

<sup>32</sup> INA §244, 8 U.S.C. §1254a. Current TPS designated countries are El Salvador, Haiti, Honduras, Nicaragua, Somalia and Sudan.

## Private Bill

A member of Congress can propose a private bill, asking Congress to grant legal permanent resident status to a particular person(s). This is an extremely rare and rarely successful last resort.<sup>33</sup>

*Faced with dropping out of college, D disclosed her immigration status to mentors from her scholarship program. D agreed to work with a McKinney-Vento State Coordinator, who collaborated with an attorney to analyze D's situation and legal options. After months of effort, D received a visa through VAWA and three years later was granted legal permanent residence in the U.S.. Currently, she is two classes away from graduating college, looking for a job and considering graduate school. Next year, she will visit her grandmother in her birth country for the first time since she left.*

## NEXT STEPS: HOW EDUCATORS CAN HELP

- Share information about the rights of students who are undocumented and those who are homeless.
  - Provide this brief and additional information (see Resources) to school counselors, registrars, teachers, secretaries and administrators.
  - Collaborate with youth-serving agencies in your community.
  - Help youth navigate higher education admissions and financial aid.
- Do not assume that all students have lawful immigration status.
  - Data show that undocumented youth live in rural, suburban and urban communities.
  - Keep in mind that some students may not have immigration documents when planning school activities, such as vocational programs, voter registration events or field trips requiring identification.
- Never push for information about a youth's immigration status.
  - School staff are prohibited by law from taking any action that might intimidate immigrants or prevent immigrant students from enrolling in school.
  - Youth may have legitimate fears about disclosing their immigration status.

<sup>33</sup> Only 41 of the 945 private bills introduced by House and Senate members since 1997 have been enacted. Arizona Daily Star, "Single-family immigration bills face great difficulty in Congress," June 15, 2008, found at: <http://www.azstarnet.com/sn/border/243832>.

- However, school staff should remain open to talking about immigration issues if students disclose their status.
- If you become aware that a youth is undocumented, encourage him or her to seek legal help immediately.
  - Inform the youth that it is likely to be easier to obtain legal immigration status before turning 18 years old.
  - If requested, assist youth in connecting with a reputable legal services agency.
  - Assure the youth that legal services agencies are required to maintain confidentiality.
  - Assist attorneys in building a relationship and trust with the youth.
- Support the youth through the immigration process.
  - Help compile documents the youth will need.
  - Provide a mailing address for immigration notices.
  - Understand the youth may be anxious, frightened and upset by the experience.
  - Remind youth about immigration-related appointments and support their attendance.

## NEXT STEPS: HOW IMMIGRATION ADVOCATES AND ATTORNEYS CAN HELP

- Share information about the rights of students who are undocumented and those who are homeless.
  - Provide this brief and additional information (see Resources) to colleagues, youth, school counselors and administrators.
  - Collaborate with youth-serving agencies in your community.
  - Work to connect unaccompanied undocumented youth with organizations that provide pro bono assistance.
- Support youth's enrollment, attendance and success in school.
  - Understand that youth may be afraid to enroll in school, believing the school will inform immigration authorities, child welfare or other law enforcement agencies about the youth's situation.
  - If a youth is not enrolled in school, explain that school is safe and important.
  - Advocate with the youth's school for immediate enrollment, full participation and appropriate services.
  - Help youth navigate higher education admissions and financial aid.

## RESOURCES

### Access to K-12 Education

The National Association for the Education of Homeless Children and Youth  
<http://www.naehcy.org/>

The National Center for Homeless Education  
<http://center.serve.org/nche/>

Legal Issues for School Districts Related to the Education of Undocumented Children  
(National School Boards Association and National Education Association, 2009)  
<http://www.nea.org/assets/docs/09undocumentedchildren.pdf>

### Access to Higher Education

Information for federal financial aid for unaccompanied youth with lawful status  
[http://www.naehcy.org/higher\\_ed.html](http://www.naehcy.org/higher_ed.html)

The College Board  
<http://professionals.collegeboard.com/guidance/financial-aid/undocumented-students>  
<http://professionals.collegeboard.com/profdownload/young-lives-on-hold-college-board.pdf>

The Dream Act Portal  
<http://dreamact.info/>

Dream Activist  
<http://www.dreamactivist.org/>

Educators for Fair Consideration  
<http://www.e4fc.org/home.html>

Private scholarships available undocumented students  
<http://maldef.org/leadership/scholarships/resources>  
<http://www.getreadyforcollege.org/pdfGR/ScholarshipsUndocumented.pdf>  
<http://www.migrant.net/migrant/scholarships.htm>  
[http://roybal-allard.house.gov/UploadedFiles/2008\\_Scholarship\\_Guide.pdf](http://roybal-allard.house.gov/UploadedFiles/2008_Scholarship_Guide.pdf)  
<http://www.goodtidings.org/>  
<http://www.comcast.com/Corporate/About/InTheCommunity/Partners/LeadersAndAchievers.html>  
<http://www.bestbuy-communityrelations.com/>  
<http://www.pointfoundation.org/instructions.html>  
<http://www.davisputter.org/apply.html>



## Immigration Support

Kids In Need of Defense

<http://www.supportkind.org/home.aspx>

Catholic Legal Immigration Network (CLINIC)

<http://cliniclegal.org>

Executive Office of Immigration Review, List of Pro Bono Providers

<http://www.justice.gov/eoir/probono/states.htm>

## Public Awareness

Papers: Stories of Undocumented Youth

<http://www.papersthemovie.com/>

Hear Us: Giving Voice and Visibility to Homeless Children and Youth

<http://www.hearus.us/>

Which Way Home

<http://www.whichwayhome.net/>

Enrique's Journey

<http://www.enriquesjourney.com/>

Underground Undergrads: UCLA Undocumented Immigrant Students Speak Out

<http://undergroundundergrads.com/2009/09/more-literature-on-important-topic.html>

## ABOUT KIND

Kids In Need of Defense (KIND) is an innovative organization created by Microsoft Corporation and actress and humanitarian Angelina Jolie that is fostering a collaborative effort between law firms, philanthropists and non-governmental organizations to provide competent and compassionate counsel to unaccompanied children in the immigration system. KIND also works to change law, policy, and practice to ensure fair treatment of unaccompanied children in the United States.

## ABOUT NAEHCY

Founded in 1989, NAEHCY works to ensure school enrollment, attendance, and overall success for children and youth whose lives have been disrupted by the lack of safe, permanent, and adequate housing. NAEHCY achieves these goals through advocacy, partnerships, and education.