

**DATE:** May 27, 2025

**TO:** Board of Trustees

**FROM:** Board Chair Julie Kusiek

**SUBJECT:** Advocacy for the Education of Undocumented Children

**RESOURCE STAFF:** Vicki de Haan, Bryan Evans, Gail Haydey, Terry Korte

**REFERENCE** [Education Act](#) sections 11(1), 3(1), 12  
[Funding Manual for School Authorities 2024/2025 School Year](#)  
[HC.AR](#) Student Admission and Enrolment  
[HEC.BP](#) Non-Resident Student Admission and Enrolment  
[Ontario Education Act](#) (s. 49.1)  
[Ontario Policy/Program Memorandum 136](#)  
[British Columbia's School Act](#) (s. 82)

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**ISSUE**

Families of undocumented children located in Edmonton are requesting full access to funded public education offered by Edmonton Public Schools.

**BACKGROUND**

Public education is an important service for students and for our wider community. It is an investment in children and in our collective future. Undocumented children are not in control of the legal status of themselves or their family.

Advocates for the education of undocumented students have raised concerns about the ineligibility of undocumented children to register with Edmonton Public Schools, requesting both Board advocacy to the provincial government and a sanctuary policy for Edmonton Public Schools passed by the Board of Trustees.

The Board of Trustees cares about the education of all children, including children who are undocumented. However, provincial legislation, funding and space constraints limit the Division's ability to enrol undocumented students and the Board's agency to create a sanctuary policy for undocumented students similar to British Columbia and Ontario.

**RELATED FACTS****Legislation in British Columbia and Ontario in comparison to Alberta**

The *Ontario Education Act* (s.49.1) has a specific provision that requires admission to a school even if the person or parent is unlawfully in Canada. Alberta's *Education Act* does not have the same provision. Furthermore, according to the Ontario Policy/Program Memorandum 136, "students to whom section 49.1 applies would, in most cases, generate provincial grants."

British Columbia's *School Act* (s.82) requires their school boards to provide education programs free of charge to resident students. That Act further provides that a student is a resident of BC if the student and the student's guardian are 'ordinarily resident' in British Columbia. According to British Columbia's "Eligibility of Students for Operating Grant Funding Policy", indicia of 'ordinary residence' for the purpose of receiving free public education in British Columbia includes items such as ownership of dwelling or long-term lease or rental of a dwelling, employment within the community, provincial driver's licence, parent or guardian filing income tax returns, etc. Alberta's *Education Act* does not have a similar provision.

### **Legislative Responsibilities in Alberta**

Section 11(1) of the *Education Act* provides that the Board shall ensure that each of its resident students is provided with an education program consistent with the requirements of the Act and the accompanying regulations.

Section 3(1) of the *Education Act* outlines that, to have the right of access to education in Alberta, a person must be a 'resident of Alberta', and have a parent who is a 'resident of Canada'. Section 1(4) defines 'resident of Alberta' and 'resident of Canada' to be a person who is "lawfully entitled to be or remain in Canada" and "does not include a tourist or visitor."

Section 12 of the *Education Act* further establishes the requirement that "a board shall enrol all individuals who are entitled under section 3 to have access to an education program in a school year before enrolling an individual who is not entitled under section 3 to have access to an education program in that school year."

The *Funding Manual for School Authorities 2024/25 School Year* (herein referred to as the Funding Manual) glossary definitions of Student(s), Child(ren), and Temporary Resident further outline the specific criteria for a student to be included in the Division's enrolment count for funding allocation, including criteria with respect to immigration status and residency. For example, the definition of Student(s) states that, to be counted towards the Division's enrolment count, a person must meet the following criteria:

1. Is a Canadian citizen on the September count date; or
  - a. is lawfully admitted to Canada for permanent residence; or
  - b. is a child of a Canadian citizen; or
  - c. is a child of an individual who is lawfully admitted to Canada as a permanent or temporary resident\*; or
  - d. is a step-child (who has been issued a study permit) of a temporary foreign worker that is in Canada on a work permit; and who is the biological or adopted child of the temporary foreign worker's spouse or partner; or
  - e. is a step-child of a Canadian citizen and is the biological or adopted child of the Canadian citizen's non-Canadian spouse or partner. The following documentation is required:
    - i. proof of application for permanent resident status and fee payment to immigration, Refugees and Citizenship Canada (IRCC); or
    - ii. valid study permit for the student.
2. Is a resident of Alberta and has a parent who ordinarily resides in Alberta on the September count date; or
  - a. is an independent student who is between 16 years of age and less than 18 years of age

- who resides in Alberta and has a parent that resides in Canada; or
- b. is an independent student who is between 18 years of age and less than 20 years of age and who resides in Alberta.

\*Also included in the Funding Manual glossary:

Temporary Resident: For purposes related to the interpretation of the *Education Act*, is defined as a person who:

1. has been issued a study permit and has registered at an Alberta designated learning institution and paid tuition for:
  - a. a full-time provincially recognized diploma program or full-time degree program of study that is a minimum of 2 years in duration; or
  - b. a full-time graduate or post-doctoral program of study that is a minimum of 1 year.
2. has been issued an employment authorization (work permit) to work temporarily in Canada (e.g., a temporary foreign worker); or
3. has filed a refugee claim to the Immigration and Refugee Board (IRB) within the past year (e.g., a refugee claimant); or
4. has diplomatic status in Canada.

A child/student whose parent qualifies as a temporary resident (as defined above) is eligible to access basic education at no cost. In short, the *Education Act* outlines which people have a right of access to education in Alberta, and sets out the statutory responsibility of a Board to its resident students.

The *Education Act* provides circumstances where enrolment may be considered for a non-resident student in a Division school:

- s.10(4): Non-resident students will be considered for enrolment in schools where sufficient space and resources are available to accommodate the student.

Note: This would be the case for a resident student of Edmonton Catholic School Division, or another Alberta division, who is seeking enrolment in a Division school. These types of non-resident students are eligible to be counted in the Division's enrolment count for provincial funding, and may attend a Division school where sufficient space is available to accommodate their programming in accordance with Board Policy HEC.BP – Non-Resident Student Admission and Enrolment and Administrative Regulation HC.AR – Student Admission and Enrolment.

- s.13(2): A board may charge tuition fees in respect of an individual who attends a school operated by the board and who is not a resident student of the board or any other board or the Government.

Note: Annually, the Board sets tuition fees for international students, non-Alberta resident students, and non-resident students requiring sponsorship from their resident board.

- s.3(1) generally provides for the right of access to education for persons between age 6 and 19. However,
- s.3(2) outlines that a board may provide an education program for an individual who is younger than 6 years of age or older than 18 years of age, and who is a resident of Alberta and has a parent who is a resident of Canada. In these age exceptions, these children and students are still eligible to be counted in the Division's enrolment count for funding allocation based on the criteria outlined in the Funding Manual.

**Provincial Limitations on Enrolment of Specific Students**

Section 12 of the *Education Act* provides that a board must enroll those who are entitled to have access to an education program under section 3 of the Act **before** allowing enrolment of ineligible students. Furthermore, it remains clear through the criteria outlined in the *Education Act* and the Funding Manual, as well as from previous enrolment audits conducted by Alberta Education, that, should the Board register a student who does not meet provincial eligibility criteria, there is no mechanism to access the provincial funding needed to provide the student's education program.

**RECOMMENDATIONS**

1. **That the Board of Trustees request that the Minister of Education and Childcare put forth amendments to the *Education Act* that authorize the enrolment of undocumented children in Alberta school jurisdictions, and amend the *Funding Manual for School Authorities* to provide full funding to support such enrolments.**
2. **That the Board of Trustees works alongside our partner organizations and other school boards to further promote this advocacy for Provincial authorization for enrolment and funding of undocumented students.**

**CONSIDERATIONS and ANALYSIS**

From time to time, there are circumstances where the Division may seek a specific decision or exemption from Alberta Education, or clarification or interpretation of funding eligibility. Any exemption in a unique or complex case to allow a student to be included in the Division's enrolment count as a funded student is at the discretion of the provincial government.

In addition to the issue of allocated funding to support programming, there is the added consideration of sufficient space and facilities to accommodate students. The Board of Trustees has advocated tirelessly for new school construction and modernizations to keep pace with enrolment growth. While we are seeing progress with 13 school projects underway, many more schools are needed to catch up with enrolment.

The increasing population in Edmonton and the resulting enrolment pressure on Division schools led to the development of the Division Growth Control Model to help manage space in schools. Based on the Division's responsibility to resident students as outlined in the *Education Act*, new non-resident students and unfunded students are not eligible to attend closed boundary schools or schools that have been subject to a random selection process.

Board policies HEC.BP – Non-resident student Admission and Enrolment and HC.BP – Resident Student Enrolment outline the Board's mandated priority to resident students, and provide for circumstances in which non-resident students and international students may be enrolled with the Division.

In the case of Division schools that may have low or declining enrolment, while there may be space to allow the enrolment of students who do not have a right of access to education, there is still no mechanism to access funding from the provincial government to support their programming.

Recommendation one speaks to the importance of having the Government of Alberta work alongside school divisions to make the necessary legislative, funding changes as well as the infrastructure

investments that are required to ensure that all children, regardless of their legal status who are living in Alberta are eligible for the same high quality public education as their resident peers.

Recommendation two speaks to the critical nature of a united, province-wide effort among all public, Catholic and francophone school boards to collectively stand up for undocumented children and to work together to advocate for the provincial changes required to allow for their education in Alberta.

**NEXT STEPS**

The Board Chair will write a letter to the Minister of Education and Childcare in alignment with Recommendation 1. The letter will also copy the Associate Minister of Multiculturalism, the Minister of Children and Family Services and the Minister of Jobs, Economy, Trade and Immigration.

In alignment with Recommendation 2, the Board Chair will write a letter to the Alberta School Boards Association (ASBA) to seek advice on preparing a robust position statement to be brought forward to ASBA member boards for consideration at the Fall General Meeting, and any other potential joint advocacy.

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