

Independent Student Status and Dependency Overrides¹

I. Introduction

The Chadbourne attorney often meets with young people who are applying for college and who will not be receiving any form of support from their parents.

As a general matter, young people who are living independently from their parents are not likely to receive financial support from their parents. These young people may, therefore, have difficulty meeting the financial burdens of higher education.

To address this issue, it is often possible to request that the prospective student be treated as independent for purposes of financial aid. This means that the student's income and financial position would be the sole basis upon which the student's financial aid package would be based.

Emancipation alone is not necessarily sufficient for the prospective student to be treated as an independent student for purposes of financial aid.²

Depending on what types of financial aid the young person is applying for and at which institutions, the requirements for treatment as an independent student will vary.

II. Requirements for Independent Student Status under the Higher Education Act

The following is a discussion of the general requirements for independent student status and how you can help the young person establish that status. However, the primary resource for young people with respect to what requirements they will need to fulfill to be deemed an independent student is the financial aid office of the schools to which the young person is applying. The young person should consult with the financial aid officials to determine what will be required for each type of financial aid.

A. Requirements to Be Deemed Independent

Under Higher Education Act Section 480(d), a student is independent if the student meets any of the following criteria:

¹ This section is based in part on the independence and financial aid section of Rights & Responsibilities of Young People in New York. In addition to reading this overview, you should read the full text of that section. For ease of reference, a photocopy of that section is attached hereto as Attachment A.

² If the young person has come to you for help with financial aid only, it is likely that you will not need to prepare an emancipation letter and that you will instead prepare an independent student letter as discussed below.

1. The student was born before **January 1, 1982**;
2. The student is a **graduate** or professional student;
3. The student is **married** as of the application date;
4. The student is an **orphan** or is or was until age 18 a ward or dependent of the court;
5. The student is a **veteran** of the armed forces; or
6. The student has **dependents** other than a spouse.

B. Requirements for a Dependency Override

If the young person does not meet any of the above criteria, the young person will be deemed a dependent student for purposes of federal financial aid. However, according to the U.S. Department of Education's Federal Student Financial Aid Handbook for 2005-2006, Application and Verification Guide (the relevant sections of which are attached hereto as Attachment B),³ “[t]he Higher Education Act allows an aid administrator to make dependency overrides on a case-by-case basis for students with unusual circumstances.”

Note that **none** of the following conditions qualify as unusual circumstances:

1. Parents refuse to contribute to the student’s education;
2. Parents are unwilling to provide information on the FAFSA or for verification;
3. Parents do not claim the student as a dependent for income tax purposes; or
4. The student demonstrates total self-sufficiency.

Unusual circumstances **do include**:

1. An **abusive family environment**; or
2. **Abandonment** by parents.

³ This handbook is reissued each year and the pagination and substance may change from year to year. Each year, the new handbook is posted at <http://ifap.ed.gov/sfahandbooks>.

III. Assisting Young People In Establishing Independent Student Status

When a young person comes to the Legal Services Center seeking help establishing independent student status, you should first go through the requirements with the young person to determine whether the young person qualifies.

Assuming the young person does qualify, you will assist the young person by preparing an independent student letter. The U.S. Department of Education's Federal Student Financial Aid Handbook for 2005-2006, Application and Verification Guide states that "the documentation of unusual circumstances should come from a third party that knows the student's situation."

Attached hereto as Attachment C is a form independent student letter.⁴ This form provides an outline of the basic information you will need to include in your letter. However, the primary information necessary to establish entitlement to a dependency override is factual. You will need to determine and include in the letter the facts that show that the young person has been abandoned or has been in an abusive family environment.

Attached hereto as Attachment D is a redacted example of an independent student letter, which you can review to see the types of facts that establish entitlement to a dependency override.

In addition to the independent student letter, you may need to assist the young person with the preparation of additional materials required by the financial aid providers. Each program and each school may have different requirements that you or the young person can find out about by contacting the financial aid offices at the schools to which the young person is applying.

For example, if the young person wants to apply for the Educational Opportunity Program, an affidavit may be required from the young person and the person with whom the young person currently resides; a letter from a teacher, counselor or other professional may also be required. An affidavit may also be helpful as an attachment to support the independent student letter you may prepare on behalf of the prospective student.

⁴ This form is also saved on the system in the Chadbourne Volunteer Handbook folder.

Attachment A

New York State has mandated that methods for preventing the spread of AIDS will be part of the health education curriculum. Parents can request that their children be exempted from this part of the health course if they provide assurance that they will educate their children at home on methods of prevention. 8 *N.Y.C.R.R.* § 135.3(b)(2) & (c)(2)(i). Parents do not have the right, however, to seek the exemption for more than the part of the AIDS curriculum that deals with methods to prevent its spread.¹⁵⁸

REPORTING CHILD ABUSE

Teachers must report suspected instances of child abuse. *New York Social Services Law* § 413. Teachers will be immune from liability if they make reports in good faith. The Commissioner of Education has ruled that a school cannot be forced to give to parents the reasons it made a report of abuse unless the school personnel were grossly negligent or acted with willful misconduct.¹⁵⁹ Teachers who make reports in good faith are also immune from school disciplinary procedures that a parent sought to bring.¹⁶⁰ See Chapter 2, "Child Maltreatment" (Liability for Making a Report).

INDEPENDENCE AND FINANCIAL AID

Young people living independently usually do not receive financial assistance from their parents. These young people frequently encounter severe barriers when it comes to attending college. A question that frequently arises is whether a student's financial aid application will be evaluated based only on the student's income, or whether the student's parents' income will also be included. This usually depends on whether the student is viewed as "independent." There has been, however, much activity to limit severely the number of students who will qualify for aid based on their independent status. The fact that a student is completely emancipated is often insufficient. Some programs require an involuntary dissolution of the family, while others require that the separation be for at least one year.

Each program has its own rules and guidelines concerning this issue, but some factors considered are:

- whether the student has reached a certain age (frequently twenty-one, but sometimes higher);
- whether the student has been self-supporting for the past year or more;
- whether the student is a parent;
- whether the student is a recipient of public assistance;
- whether the student has established a household separate from his or her parents;
- whether the student's parents have claimed the student as a dependent on their federal tax returns; and
- whether the family relationship has been involuntarily terminated (through abuse or other cause).

Young people should be advised to consult with their school's admissions or financial aid office concerning the factors used in the financial aid program for which they are applying.

158 Application of Ware, 28 Ed Dept Rep 415 (1989).

159 Appeal of Gottlieb, 31 Ed Dept Rep 125, Dec. No. 12,592 (1991).

160 Appeal of Anonymous, 32 Ed Dept Rep 433, Dec. No. 12,878 (1993).

Attachment B

STEP 3

Dependency status and overrides

Early exit cadets

Students who attend a military academy or military academy preparatory school and who are discharged other than dishonorably prior to commission are veterans for ESA purposes but might not be veterans for VA purposes. These students will likely receive match results showing that they aren't veterans. Just like other students who receive these match results, if the early exit cadet meets one of the other criteria for independence, then no resolution is required. If, however, an early exit cadet meets no other independence criteria, the school will have to perform a dependency override to make the student independent. Of course, the school must have appropriate documentation of the student's situation.

Student living with relatives example

Malia's father is dead, and her mother can't support her, so she is living with her grandmother. Her mother doesn't pay any money for her support. Malia doesn't meet any of the independence criteria, so she has to provide parental information. Because her grandmother hasn't adopted her, her grandmother isn't her parent. Malia will have to provide information about her mother on the form unless her school has proof of unusual circumstances that would warrant a dependency override. Either way, the school might use PJ to account for the grandmother's support.

Dependency overrides

HFA Sec. 480(d)(7). Also see Dear Colleague Letter GFN-03-07.

time the student has to have served to be a veteran, but it does have to be active service.

The application also tells students to answer "Yes" to the question about veteran status if they aren't yet a veteran but will be by June 30, 2006. Students who attended a **U.S. military academy** or its preparatory school (USMAPS or NAPS, not high school academies) for at least one day and were released under conditions other than "dishonorable" count as veterans for Title IV purposes. Students serving in ROTC or currently attending a U.S. military academy are not veterans.

Members of the **National Guard or Reserves** are only considered veterans if they were called up to active federal duty by presidential order for a purpose other than training. It does not matter how long the active duty lasted or if the student returned to reserve status afterward, but, as with the other qualifying veterans, the student must have had a character of service that was not "dishonorable."

Dependency overrides

The Higher Education Act allows an aid administrator to make dependency overrides on a **case-by-case** basis for students with unusual circumstances. If the administrator determines that an override is appropriate, she must write a statement detailing the determination and must include the statement and supporting documentation in the student's file. **However, none of the conditions listed below, singly or in combination, qualify as unusual circumstances meriting a dependency override:**

- 1) Parents refuse to contribute to the student's education;
- 2) Parents are unwilling to provide information on the FAFSA or for verification;
- 3) Parents do not claim the student as a dependent for income tax purposes;
- 4) Student demonstrates total self-sufficiency.

Unusual circumstances do include an abusive family environment or abandonment by parents and may cause any of the above conditions. In such cases a dependency override might be warranted. See Chapter 5 for more information on other professional judgment (PJ) changes.

An aid administrator may override only from dependent to independent (though as noted earlier, if an independent student receives substantial support from her parents, a school may use PJ to adjust the COA or FAFSA data items such as untaxed income).

Also, overrides do not transfer from one school to another—they are valid only at the school that performs them. Nor do they carry over from one year to the next; the financial aid office must reaffirm each year that the unusual circumstances persist and that an override is still justified.

Generally the documentation of unusual circumstances should come from a third party that knows the student's situation (such as a teacher or member of the clergy), but in cases where this is not available, the school can accept a signed and dated statement from the student detailing the unusual circumstances.

To override the student's dependent status on an initial application through FAA Access, the aid administrator should use the Dependency Override code of "1" (see the *EDE Technical Reference* for more information).

To authorize a dependency override on a paper FAFSA, the aid administrator marks the oval for an override, labeled "D/O," in the "School Use Only" box, fills in the school's federal school code, and signs. A separate letter attached to the application in lieu of making the override is **not** acceptable.

If the student has already applied, the FAA can use FAA Access to CPS Online to authorize or cancel an override; overrides cannot be done on the SAR.

STEP 3

Dependency overrides

Overrides and professional judgment

The phrase "professional judgment" is commonly used for the discretion that FAAs apply to dependency overrides and to data adjustments in the application. It is important to note that the provisions for these two types of changes are in separate places in the HEA. The citation for dependency overrides is in Sec. 480(d)(7); the citation for data adjustments is found in 479A and is copied in toto in a margin note in the last chapter of this guide.

FAFSA School Use Only Box

<p>SCHOOL USE ONLY:</p> <p>D/O <input type="radio"/></p> <p>FAA Signature</p> <p>_____</p>	<p>Federal School Code</p> <p>□ □ □ □ □ □ □ □</p>
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Overrides performed at another school

When a school performs an override for a student, any other schools also listed on that transaction will not receive the resulting ISIR. But if the student then adds your school to that transaction, you will receive an ISIR with the other school's override. You cannot simply accept that override; as noted in the text on this page, overrides do not carry over from one school to another, and you will have to gather the necessary documentation if you decide to make the student independent.

STEP 3

Questions 48-54 Dependency status

Criteria for independence

For the 2005-2006 year a student is independent if he meets any of the following criteria from HEA Sec. 480(d), i.e., if he:

- was born before January 1, 1982.
- is a graduate or professional student.
- is married as of the date he applies.
- is an orphan or is or was until 18 a ward/dependent of the court.
- is a veteran of the U.S. armed forces.
- has dependents other than a spouse.

→ **Excluded assets for Native American students.** The law explicitly excludes reporting any property received under the Per Capita Act or the Distribution of Judgment Funds Act (25 United States Code 1401, et seq.), the Alaska Native Claims Settlement Act (43 United States Code 1601, et seq.), or the Maine Indian Claims Settlement Act (25 United States Code 1721, et seq.).

- **Questions 46 and 47** ask about the student's veterans education benefits and for how many months they will be received. If students receive veterans education benefits, they must report the amount of monthly benefits they expect to receive during the school year (from July 1, 2005 through June 30, 2006). Benefits include a range of assistance from the U.S. Department of Veterans Affairs (VA), such as the Montgomery GI Bill benefits. Veterans education benefits are not used in the EFC calculation; instead, they are counted as a resource or estimated financial assistance when packaging campus-based aid or Stafford/PLUS loans. (See *Volume 3: Calculating Awards and Packaging* for exceptions and further details on packaging FSA funds with VA educational benefits.)

STEP THREE: DEPENDENCY STATUS

Purpose: Over the years most institutional financial aid policies have been based on the premise that the family is the first source of the student's support. The law governing the FSA programs has followed the same principle, and it provides several criteria that decide if the student is considered independent of her parents for aid eligibility. Note that a student reaching the age of 18 or 21 or living apart from her parents does not affect her dependency status.

If the student is considered a dependent of his parents, information on the income and assets of the parents must be included on the FAFSA. The CPS will calculate a parental contribution and add it to the student's contribution to derive an EFC.

In unusual cases, an aid administrator can determine that a student who doesn't meet any of the independence criteria should still be treated as an independent student. (See "Dependency overrides" later in this section.)

- **Question 49 (graduate or professional study).** The FAFSA asks the student if she will be working on a master's, doctorate, or graduate certificate program in the school year. A student who answers "Yes" to this question is a graduate or professional student and is independent for purposes of Title IV aid.

Graduate and professional students aren't eligible for Pell grants, so a student who incorrectly answers "Yes" to this question must submit a correction before he can get a Pell grant.

Students should fill out the FAFSA based on their grade level for the award year. If a dependent student completes her undergraduate program during the year and begins graduate school, she can update the answer to the dependency question so that the CPS can reprocess her application, or the aid administrator at the graduate school can recalculate her EFC and use it to package her graduate aid.

- **Question 50 (married).** This question must be answered according to the student's marital status at the time the FAFSA is filled out. If the student is engaged to be married, she must answer as unmarried unless she waits until after the marriage to complete the FAFSA. If she is married and planning to divorce, she must answer as married. Note that a student **cannot** update FAFSA information for changes in marital status after the application is filed.

If the student has a relationship that meets the criteria for common-law marriage in his state, the student is considered to be married. A married student who is separated (not divorced) is considered married for determining dependency status. A student who was independent only because he was married becomes dependent for the next award year if he divorces and cannot answer yes to any of the dependency questions.

- **Questions 51-52 (children and legal dependents).** Students who have legal dependents are independent. Legal dependents comprise children (including those who will be born before the end of the award year) of the student who will receive more than half their support from the student and other persons (except a spouse) who will both live with and receive more than half their support from the student for the coming award year. The same criteria apply to household size.
- **Question 53 (orphan or ward of the court).** The student is an **orphan** if both parents are dead and the student doesn't have an adoptive parent. Such a student is considered an orphan even if she has a legal guardian.

A student qualifies as a **ward of the court** if the court has assumed custody of her. In some states the court may impose its authority over a juvenile who remains in the legal custody of her parents; such a student is not a ward of the court. Also, neither emancipation (when a child is released from control of a parent or a guardian) nor incarceration of a student qualify her as a ward of the court.

- **Question 54 (veteran of the U.S. Armed Forces).** For FSA eligibility, veterans are those who have been in active service (which includes basic training) in the U.S. Army, Navy, Air Force, Marines, or Coast Guard and were released under a condition other than "dishonorable." There is no minimum amount of

STEP 3

Questions 48-54 Dependency status

Independent student with parental support example

Doug is a graduate student, so he's independent even though he still lives with his parents and has no income of his own. Although the FAA at his school can't make him a dependent student, she decides to use professional judgment to add an amount to his untaxed income to account for the in-kind support his parents provide.

Legal dependent examples

Laurel is going to college and is her cousin Paul's legal guardian. Paul receives Social Security benefits, but because he's a minor, the benefits are paid to Laurel on his behalf. These benefits provide more than half of Paul's support and count as income to Laurel. Because Paul lives with Laurel and will be supported by her (through the Social Security benefits) throughout the award year, Laurel answers "Yes" to the legal dependent question. If Paul didn't live with Laurel, she would have to answer "No" to the question.

Alan pays \$4,000 to support his girlfriend, Cathy, who lives with him. She has earned income of \$3,000, and she receives \$200 a month (\$2,400 a year) from her parents. She uses all of this for her support. Alan cannot consider Cathy a dependent since the \$4,000 he provides is not more than half of her total support of \$9,400.

Attachment B

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To whom it may concern:

I am a visiting attorney at The Door's Legal Services Center. The Door is an official social services agency for young people ages 12 to 21. After applying the legal test set forth in New York case law, it is my opinion that [insert young person's name] qualifies as an emancipated minor under New York law.

Emancipation is the renunciation of legal duties by a parent and the surrender of parental rights over the child. Emancipation may occur when a parent's conduct is not consistent with the performance of parental duties, or by the young person's assumption of a status that is not consistent with compliance to parental control. New York State does not have a codified statute that deals with emancipation, nor is it possible to get a court order of emancipation in New York. New York law, however, does recognize emancipation.

The criteria for emancipation have been outlined through case law. To determine whether a minor is emancipated, three factors are given importance: (1) whether the young person lives separate from his or her parents or legal guardian, or, if at home, whether the young person pays room and board; (2) whether the young person receives support from his or her parents or legal guardians; and (3) whether the young person manages his or her own affairs.

[Mr./Ms.] qualifies as an emancipated minor. [Mr./Ms.] is [16/17] years old and has been [living independently from her mother and father since]. [Describe living situation of the emancipated minor.]

[Mr./Ms.] has not received any support, financial or otherwise, from her mother or father since [.....]. [Mr./Ms.] has supported herself and has managed her own financial affairs since [.....]. She does not expect to receive any financial support from her parents in the future.

[Describe any additional circumstances.]

If you have any questions regarding [Mr./Ms.]'s status as an emancipated minor, please contact me at (212) 941-9090, extension 3287.

Sincerely,

[Insert Your Name]
Visiting Attorney
The Door's Legal Services Center

Attachment C

_____, 200_____

Financial Aid Administrator

RE: Request to be Considered an Independent Student

To the Financial Aid Administrator:

I am a visiting attorney at The Door's Legal Services Center. The Door is a not-for-profit agency providing a wide range of services to young people ages 12 to 21. I write to explain [insert the name of the young person] status as an "independent student" for purposes of federal financial aid.

Under the Higher Education Act, a student may be considered independent if a financial aid administrator determines and documents the student's independent status on the basis of unusual circumstances. The U.S. Department of Education's Federal Student Financial Aid Handbook for 200[]-200[], Application and Verification Guide states that "[t]he Higher Education Act allows an aid administrator to make dependency overrides on a case-by-case basis for students with unusual circumstances." (See AVG-24). It further states that unusual circumstances "include an abusive family environment or abandonment by parents." (See AVG-24). **[Confirm citations; they may change from year to year.]**

[Mr./Ms. _____] qualifies for a "Dependency override" based on [state extraordinary circumstances that apply]. [Describe facts of extraordinary circumstances].

[Describe young person's current living situation.]

[Describe how the young person currently supports himself and state that the young person does not receive financial support from anyone else.]

[If applicable, state that, because of the young person's extraordinary circumstances, the young person has no access to his parents' financial information and cannot obtain their signatures.]

Based on the unusual circumstances described above, [Mr./Ms. _____] qualifies for a dependency override.

Please feel free to contact me at (212) 941-9090 ext. 3287 if you have any questions regarding [Mr./Ms. _____]'s case.

Sincerely,

[Insert Your Name]
Visiting Attorney
The Door's Legal Services Center

Attachment D

March 29, 2005

Financial Aid Administrator

RE: Request to be Considered an Independent Student

To the Financial Aid Administrator:

I am a visiting attorney at The Door's Legal Services Center. The Door is a not-for-profit agency providing a wide range of services to young people ages 12 to 21. I write to explain John Doe's status as an "independent student" for purposes of federal financial aid.

Under the Higher Education Act, a student may be considered independent if a financial aid administrator determines and documents the student's independent status on the basis of unusual circumstances. The U.S. Department of Education's Federal Student Financial Aid Handbook for 2005-2006, Application and Verification Guide states that "[t]he Higher Education Act allows an aid administrator to make dependency overrides on a case-by-case basis for students with unusual circumstances." (See AVG-24). It further states that unusual circumstances "include an abusive family environment or abandonment by parents." (See AVG-24).

Mr. Doe qualifies for a "Dependency override" based on an abusive family environment and abandonment. In early January 2005, Mr. Doe was forced to move out of his parents' home. He left because his parents had ceased to support him financially and failed to provide for his basic needs, including food. Mr. Doe's parents were also neglectful and often came home only to sleep. Mr. Doe's father was often intoxicated while at home and was physically abusive, creating an unlivable environment for Mr. Doe and forcing him to find food and shelter elsewhere.

Since being forced to leave his parents' home in early January, 2005, Mr. Doe has lived with a friend and supports himself financially through an after-school job. Since leaving, Mr. Doe has not returned to his parents' home, nor has he spoken with his parents. His parents have not attempted to contact him. Because Mr. Doe has no relationship with his parents, he has no access to their personal or financial information. His parents will not provide him with information and will not sign any documents.

Based on the unusual circumstances described above, Mr. Doe qualifies for a dependency override.

Please feel free to contact me at (212) 941-9090 ext. 3287 if you have any questions regarding Mr. Doe's case.

Sincerely,

Joshua W. Walker, Esq.
Visiting Attorney
The Door's Legal Services Center