
Are undocumented students entitled to a free public elementary and secondary school education?

Yes. Public schools are prohibited from denying undocumented students a free public education. (*Plyler v. Doe* (1982) 457 U.S. 202.) Under *Plyler*, the undocumented or non-citizen status of a student (or his/her parent or guardian) is irrelevant to that student's entitlement to an elementary and secondary public education.

Can I ask a student questions regarding his/her immigration status?

No. The District should never ask a student, or the parent/guardian of the student, questions regarding citizenship or immigration status. (See U.S. Dept. of J. and U.S. Dept. of Ed. Fact Sheet: Information on the Rights of All Children to Enroll in School, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>.) A student's citizenship or immigration status is not relevant in establishing residency requirements. (OCR Dear Colleague Letter, May 8, 2014.)

What kind of documents must an undocumented student provide to establish proof of residency for enrollment purposes?

Undocumented students wishing to enroll in a school may establish residency by providing the same documents as required by other students. For example, this may include a rental agreement or payment, correspondence from a government agency, a declaration of residency executed by the parent/guardian of the student, utility bills or other documents. (Ed. Code, § 48204.1.)

Schools should be cognizant, however, that school enrollment cannot be denied to a student, undocumented or otherwise, who is homeless and unable to show that he/she lives within the district's boundaries.

What kind of documents can a school request to establish an undocumented student's age?

Schools are permitted to request documentation to show that a student falls within a school's minimum and maximum age requirements. (Ed. Code, § 48002, Cal. Code Regs., tit. 5, § 432, subd. (b)(1)(B).) Acceptable documents for establishing age include a birth certificate, an affidavit from a parent, or previously verified school records. (See U.S. Dept. of J. and U.S. Dept. of Ed. Fact Sheet: Information on the Rights of All Children to Enroll in School, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>.)

It should be noted, however, that although a school may request the aforementioned documents, a student cannot be prevented from enrolling or attending at a school because he or she lacks a birth certificate, or has records indicating a foreign place of birth. There is no legal requirement for the district to retain a copy of the birth certificate in its records.

Are undocumented students entitled to participate in extracurricular school activities and other school services?

Yes. Unless an activity does not contribute to educational goals, and the denial of participation furthers a substantial state goal, the activity is likely protected under *Plyler's* guarantee of access to education. Because there are strong arguments that extracurricular activities are central to the student's educational experience, undocumented students should have the right to participate in those activities. This right extends to services related to transportation, special education, Section 504 services, and free and reduced meals.

Is an undocumented student entitled to the same privacy rights under the Family Educational Rights and Privacy Act as other students?

Yes. All students within a school district are entitled to privacy rights with regard to each student’s educational records, under the Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g; 34 C.F.R. § 99.1 et seq.), as well as under California law (Ed. Code, § 49060 et seq.). Under FERPA, a school district may disclose “directory information” to certain entities, so long as the school district has given the student/parents notice and an opportunity to refuse to disclose such directory information. What categories of directory information that will be released is a question determined at district level through board policy. (Ed. Code, § 49073, subd. (a).) Other records related to a student’s education at the school district, and which are personally identifiable, are protected under FERPA and state law from unauthorized disclosure.

May an Immigration and Customs Enforcement (“ICE”) agent obtain otherwise private student records by way of a valid subpoena, search warrant, or court order?

Yes. Prior to releasing otherwise private student records to ICE, the superintendent should review the subpoena, search warrant, or court order, and consult with legal counsel, to determine the scope of the subpoena, warrant or court order, and whether it is genuine. In the case of search warrants, the school district will have little time to conduct a review of the documents. If the ICE agent is willing to cooperate with the school district and its legal counsel, the parties should coordinate to achieve compliance with the warrant that minimizes the disruption to school operations. Subpoenas and court orders do not present the same level of immediacy as a search warrant.

What if ICE appears on campus without a subpoena, court order, or search warrant, no exigent circumstances, and requests protected student educational records?

Under the above circumstances, the school district must refuse to produce the requested documents in compliance with FERPA and the California Education Code provisions that prevent the unauthorized disclosure of student records.

Are school district personnel required to assist ICE in the enforcement of immigration laws?

While there are no laws mandating local school districts to assist ICE in the enforcement of immigration laws, school personnel are nonetheless strongly discouraged from *frustrating* law enforcement purposes. Actively resisting the efforts of ICE may result in legal consequences to school personnel. Under Title 18 United States Code section 111, it is unlawful for a person to willfully resist, oppose, impede, or interfere with any officer of the United States Government who is discharging or attempting to discharge his or her official duties. Furthermore, federal law prohibits any person from intentionally concealing, harboring, or shielding an undocumented person from detection, where that person’s unlawful immigration status is known. (8 U.S.C. § 1324.)