

Enrolling Undocumented Children in Public Schools and in Catholic Schools*

As states and municipalities have taken an increasing interest in immigration issues over the last few years, some Catholic school officials have expressed concern that the enrollment of undocumented children in Catholic schools will raise legal issues. This article responds to those concerns and provides an overview of the relevant law.

Can undocumented children enroll in kindergarten through twelfth grades?

Yes, undocumented children can enroll in elementary and high schools.¹ In fact, in most states all children are required to attend school.²

Do undocumented children have a right to a free public school education?

Yes. In 1982 the United States Supreme Court ruled in Plyler v. Doe that undocumented children have the same right to attend school as U.S. citizen children.³ The Court pointed out that America has long recognized public schools as “a most vital civic institution for the preservation of a democratic system of government” and “as the primary vehicle for transmitting ‘the values on which our society rests.’”⁴ The Court held that, “In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”⁵

The Plyler v. Doe decision specifically concerned whether undocumented children have the right to a free public school education. Plyler does not require private elementary and high schools to provide free education to undocumented children. Due to the important public policy reasons discussed in Plyler, it is highly unlikely that any school that enrolls undocumented children would be prosecuted for doing so. In fact, no school has ever been prosecuted or charged with “harboring” based on the immigration status of its students. Moreover, if a school decided to treat students differently based on their immigration status—for example by refusing to enroll undocumented children—it would likely invite litigation based on violations of federal or state civil rights laws.

* The information in this document is current as of January 12, 2009. The information contained in this document is for general informational purposes only. It is not intended to serve as legal advice and it does not substitute for legal counsel.

¹ See generally, Plyler v. Doe, 457 U.S. 202 (1982).

² See, for example, Ala. Code § 16-28-3; Alaska Stat. § 14-30-010; D.C. Code Ann. § 38-202; Mass. Gen. Laws Ann. § 76-1; and Neb. Rev. Stat. § 79-201.

³ See generally, Plyler v. Doe, 457 U.S. 202 (1982). See also National Education Association memorandum, Immigration Status and the Right to a Free Public Education, July 2007.

⁴ 457 U.S. at 221, citing Abington School District v. Schempp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring); and Ambach v. Norwick, 441 U.S. 68, 76 (1979).

⁵ 457 U.S. at 221.

Are there practices that a school may not engage in?

Yes. As undocumented children have the same right to attend school as other children, there is no reason for a school to inquire into a child's immigration status. The school cannot ask questions or take actions that would deter parents from enrolling their children in school. Therefore, a school may not:

- Request students or parents to disclose their immigration status
- Require a Social Security Number from students or parents
- Engage in any practices that would chill a student's access to education⁶

Can a school ask for a child's Social Security Number?

Yes, a school can ask for a Social Security Number, but it is not required to ask for one. Under the Privacy Act of 1974, a federal state or local government agency cannot deny a person a right, benefit, or privilege provided by law because of the person's refusal to disclose her Social Security Number.⁷ An agency can deny a right, benefit or privilege only if disclosure is required by federal law or if it required disclosure prior to 1975. Federal law does not require a student to provide a Social Security Number to enroll in school. Therefore, a school cannot deny a student the right to attend school if the student does not present a Social Security Number. A school may request disclosure of a Social Security Number. Under the Privacy Act, however, the school must inform the parent that disclosure is not required.⁸

Can a school require proof of address?

Yes. In terms of public schools, children are eligible for free public education only in the school district where they reside. Therefore, public schools have a right to ask for documents that prove that the student lives in the school district. In terms of private schools, these entities also have valid, nondiscriminatory reasons to require a student's address, for example, to learn if a student is registered in the parish. Therefore, private schools also have a right to require proof of address.

Can a school require a child's birth certificate?

When a child is enrolling, a school may require proof of the child's age and identity. In most states, parents can present a birth certificate or other reliable evidence, such as a baptismal certificate, a family Bible, or an affidavit from a person who knows the family.⁹

⁶ See *Plyler v. Doe*, 457 U.S. 202 (1982) and *LULAC v. Wilson*, 908 F.Supp. 755 (C.D. Cal. 1995). See also Jaclyn Brickman, *Educating Undocumented Children in the United States: Codification of Plyler v. Doe through Federal Legislation*, 20 Geo. Immig. L.J. 385, 388 (2006).

⁷ Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896 (codified at 5 U.S.C. 55a note (Disclosure of Social Security Number) (1996)).

⁸ Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896 (codified at 5 U.S.C. 55a note (Disclosure of Social Security Number) (1996)).

⁹ Jaclyn Brickman, *Educating Undocumented Children in the United States: Codification of Plyler v. Doe through Federal Legislation*, 20 Geo. Immig. L.J. 385, 388 (2006).

Are schools required to submit information about undocumented students to the Student and Exchange Visitor Information System (SEVIS)?

No. The federal government created the Student and Exchange Visitor Information System (SEVIS) to monitor foreign students temporarily visiting the United States on a nonimmigrant student visa or visitor visa. Such foreign students typically use an F-1 or J-1 visa. Schools that enroll these students must submit information to SEVIS. Undocumented students, on the other hand, do not have a visa that is monitored by the federal government. Therefore, schools are not required to submit information about undocumented students to SEVIS. In addition, as discussed below, sharing student information with officials outside the school may violate confidentiality and privacy laws.

If a school official learns that a child is undocumented, can she disclose that information to a third party?

The federal Family Education Rights and Privacy Act (FERPA) protects the privacy of student education records.¹⁰ FERPA applies to any educational institution that receives funds under any program administered by the U.S. Department of Education.¹¹ The law defines education records broadly to include both academic and personal information. Under FERPA, schools must obtain written permission from a student's parents prior to disclosing education records.¹² There are limited exceptions, including providing records to a student's new school, in order to comply with a judicial order or a lawfully issued subpoena, and to appropriate authorities in a health or safety emergency.¹³

Schools that do not receive any funds from any program administered by the federal Department of Education are not subject to FERPA. Such schools may want to consider drafting and implementing their own confidentiality and privacy policies, if they have not done so already, in order to assure that they meet their mission of creating a peaceful environment that fosters spiritual growth and academic excellence.

Should you have any questions concerning the contents of this document, please contact national@cliniclegal.org. This document was prepared by Helen Harnett, CLINIC staff attorney who can be reached at (202) 756-5523 or hharnett@cliniclegal.org.

¹⁰ 20 U.S.C. § 1232(g); 34 C.F.R. Part 99.

¹¹ 34 CFR § 99.1(a).

¹² 20 U.S.C. § 1232(g)(b)(1).

¹³ 20 U.S.C. § 1232(g)(b)(1).