



State Education Bills

Access to Elementary and Secondary Level Education (2013)

As states and municipalities have taken an increasing interest in immigration issues over the last few years, some legislatures have sought to restrict access to public education to immigrant children. This document discusses the right to education in the United States (U.S.).

What are the educational requirements for children in the United States?

Every state requires children to enroll in public or private education or to be home-schooled. While the age-requirement differs by state, all children are required to continue their education into their high school years.¹

Do all children regardless of immigration status have a right to a free public school education?

Yes. Children in the U.S., regardless of their immigration status, have a right under the U.S. Constitution and federal law to an elementary and secondary education in public schools.² School Districts across the nation were recently reminded of this right of equal access to public education by the U.S. Department of Justice and the U.S. Department of Education in a Memorandum dated May 6, 2011. “Under federal law, State and local educational agencies (hereinafter ‘districts’) are required to provide all children with equal access to public education at the elementary and secondary level.”³ Immigrant children do not need a green card, visa, passport, alien registration number, social security number or any other proof of citizenship or immigration status in order to register for school.

The right to a free public education was established in 1982 with the U.S. Supreme Court’s decision in Plyler v. Doe.⁴ In this case, the Supreme Court struck down a Texas state statute that barred undocumented children from public education. According to the majority opinion, the Texas statute was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. (The Equal Protection Clause provides that no State shall “deny to any person within its jurisdiction the equal protection of the law.”)

In the decision, Justice Brennan, writing for the majority, notes the importance of education in preventing an underclass and in promoting integration into society. The court stated, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”⁵ It also 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

¹ 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.

² See Plyler v. Doe, 457 U.S. 202 (1982).

³ U.S. Department of Justice and U.S. Department of Education, Memorandum to School District, May 6, 2011.

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

⁵ Plyler v. Doe, 457 U.S. at 223.



rests.”⁶ 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.”⁷ Additionally, the court recognized the unfairness of denying education to undocumented children who lacked responsibility or culpability for their undocumented status. It stated that the Texas law “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”⁸

Can school districts charge tuition to students that are not U.S. citizens?

No. As noted above, school districts are required to provide all children with equal access to public education at the elementary and secondary school level. Thus, a school district cannot charge a fee or tuition to immigrant students in their district if they do not charge non-immigrant students a fee or tuition to attend school in their district as this policy/practice would violate the U.S. Constitution and federal law.

Are there other practices that a school may not engage in?

Yes. As immigrant 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;
- Request documentation of the students or parents immigration status;
- Require a Social Security Number from students or parents; and,
- Engage in any practices that would chill a student’s access to education.⁹

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.¹⁰ 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

⁶ Id. 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).

⁷ Id. at 221.

⁸ Id. at 223.

⁹ See Plyler v. Doe, 457 U.S. 202 (1982) and LULAC v. Wilson, 908 F.Supp. 755 (C.D. Cal. 1995). See also, U.S. Department of Justice and U.S. Department of Education, Memorandum to School District, May 6, 2011; 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).

¹⁰ U.S. Department of Justice and U.S. Department of Education, Memorandum to School District, May 6, 2011. See 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)).



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.¹¹

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 name and age. 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.¹²

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 about a child's immigration status, 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.¹³ FERPA applies to any educational institution that receives funds under any program administered by the U.S. Department of Education.¹⁴ 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.¹⁵ 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.¹⁶

¹¹ 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)).

¹² Jaelyn Brickman, Educating Undocumented Children in the United States: Codification of Plyler v. Doe through Federal Legislation, 20 Geo. Immig. L.J. 385, 388 (2006).

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

¹⁴ 34 CFR § 99.1(a).

¹⁵ 20 U.S.C. § 1232(g)(b)(1).

¹⁶ 20 U.S.C. § 1232(g)(b)(1).



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.

Along with the right to a free public K-12 education, do children living in the U.S. have other educational rights in the public schools?¹⁷

Yes. There are a number of other educational rights that children and their families enjoy. These include: (1) the right to be free from unlawful discrimination; (2) the right of parents to understandable school information; (3) the right of parents to review student disciplinary actions; (4) the right of parents to inspect and review their child's education records; (5) the right of parents to review school achievement data and participate in school improvement activities; (6) the right of English language learners to have an appropriate education; (7) the right of disabled students to receive special education services; and (8) the right of children to school choice and/or free tutoring.

If a child's federal rights are being violated, what recourse does a parent have?

A violation of federal rights can sometimes be resolved by meeting with school or district officials, describing the problem, and agreeing to a plan to fix it. If this is not effective and a parent believes that his/her child's rights are being violated, they can contact an attorney in his/her area, the Mexican American Legal Defense and Education Fund (MALDEF) national office at 213-629-2512, or the Office of Civil Rights of the U.S. Department of Education at 1-800-421-3481. MALDEF is a national leader in the area of federal education rights of students and their families.

This document was prepared by Karen Herrling, CLINIC's State and Local Advocacy Attorney in February 2013. This document is for informational purposes only and is not intended as legal advice. For questions, please contact Karen Herrling at kherrling@cliniclegal.org or (717) 396-3893.

¹⁷ Information about the K-12 educational rights of children was obtained from a pamphlet prepared by the Mexican American Legal Defense and Education Fund (MALDEF). The pamphlet, "Know Your K-12 Education Rights," can be obtained from MALDEF's website at: <http://www.maldef.org>.