

# Immigration & Schools 101

All students have a right to enroll in public school, **regardless of their immigration status**.

- Under the U.S. Constitution, public schools must teach all students free of charge, regardless of whether they are undocumented.
- States cannot withhold state funding for K-12 education because undocumented students are enrolled, and school districts cannot deny enrollment based on immigration status.
- Sometimes called a “*Plyler* right,” the understanding that undocumented students may not be denied access to public education was first recognized by the U.S. Supreme Court in its decision in *Plyler v. Doe* (1982).

Students have the right to attend school without having to present a green card, visa, social security number, or any other proof of citizenship.

- Schools should not inquire about students’ or their parents’ immigration status.
- Schools cannot deny enrollment to students because they provide a birth certificate from another country.
- Inquiring about immigration status or citizenship could violate *Plyler* rights by chilling undocumented students from attending schools.

Schools can require proof of residency in the appropriate school or district boundary.

- A state or district may establish bona fide residency requirements and thus might require that all prospective students show some proof of residency.
- Districts must permit parents to establish residency by providing a variety of documents as proof of residency and cannot require documents that would bar or chill undocumented students from attending.
- Such documents include: a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from one of the parent’s employers. Schools cannot apply different residency requirements to immigrant students than they do to others.
- Homeless students, as defined by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 et seq., must not be required to furnish proof of residency within the district under any circumstance. Homeless children and youth have a federal legal right to enroll in school, even if their families cannot produce the documents establishing residency.

Schools can require proof of age for enrollment.

- Schools can use birth certificates to establish a student’s age but cannot do so in a way that unlawfully bars or prevents an undocumented student, a student whose parents are undocumented, or a homeless student from enrolling in and attending school.
- Schools should inform parents that alternatives to birth certificates are allowed, and allow alternative documentation of age such as a religious, hospital, or physician’s certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a foreign birth certificate; previously verified school records; or any other documents permitted by law. Foreign-born students must not be barred from attending school.

## **IMMIGRATION ENFORCEMENT AT SCHOOLS—THE IMPORTANCE OF SAFE ZONE POLICIES**

Since 2011, the Department of Homeland Security (DHS) has listed schools as “sensitive locations” where Immigration and Customs Enforcement (ICE) arrests, interviews, or searches should not take place absent unusual circumstances. In 2021, the Biden administration issued a [new policy](#) expanding the areas protected from enforcement beyond K-12 schools to pre-K through post-secondary schools, and places where children gather such as playgrounds, recreation centers, bus stops, childcare centers, and group homes for children.

- Trump did not rescind the “sensitive locations” guidance during his first administration, but immigration enforcement occurred near schools and school bus stops, including when ICE officers detained a parent in Los Angeles as he left school after dropping off one of his children. Such enforcement would not be permitted under the expanded Biden “protected areas” guidance.
- Project 2025 calls for rescinding the “protected areas” guidance and it remains to be seen whether the Trump Administration will withdraw this guidance.

Given the uncertainty about whether schools might be targeted, it is important to put protections in place at the local level that limit immigration enforcement at schools. Countless school districts around the country have already passed [Safe Zones resolutions](#) to do so. Such resolutions:

- Make clear that your school district is a welcoming place for all students, prohibit the collection of student immigration information and establish procedures for responding to immigration enforcement.
- You need to understand that a Safe Zone resolution does not provide immunity should you decline to obey directives from law enforcement. Rather, it provides steps that you should request that law enforcement follow. If law enforcement refuses to cooperate, that becomes a matter for district legal counsel and courts to determine. You should not put yourself or those around you at risk to enforce the requirements.
- Educators should never physically interfere with or obstruct an immigration officer in the performance of his or her duties as this could escalate the situation and could endanger both the educator and students.

If your school district has not yet adopted a Safe Zones resolution or other policy for all school staff to follow if immigration officers show up at school, the following information describes what educators should do.

- If immigration officers attempt to enter a school's campus, educators should direct ICE/CBP agents to the school district Superintendent. The Superintendent should request to see written legal authorization and verify the identity of the agents. It is important for the Superintendent to review, with legal counsel, what the immigration officer provides as such legal authorization. There is a distinction between an ICE administrative warrant and a traditional federal court warrant. School districts may respond differently depending on the type of warrant.
- An ICE administrative "warrant" is the most typical type of "warrant" used by immigration officers. It authorizes an immigration officer to arrest a person suspected of violating immigration laws. It is not a warrant within the meaning of the Fourth Amendment of the U.S. Constitution because an ICE warrant is not supported by a showing of probable cause of a criminal offense and is not issued by a court judge or magistrate.
  - An ICE warrant does **not** grant an immigration officer any special power to compel school officials to cooperate and is not a "court order" that would, under FERPA, allow a school to disclose educational records without parent or guardian consent.
- A federal or state court warrant is issued by a federal or state court judge. A school official should act in accordance with district policy when presented with a federal or state court warrant.
- An administrative subpoena is a document that requests production of documents or other evidence and is issued by an immigration officer. School districts do not need to immediately comply with the ICE administrative subpoena. If an immigration officer arrives with an administrative subpoena, the school district may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge.

Project 2025 proposes requiring public schools to charge tuition to certain immigrant children as a way of setting up a legal challenge to overturn *Plyler v. Doe*. *Plyler* still remains the law of the land and public schools cannot deny undocumented students access to public education including by charging tuition to immigrant students. To protect students and their *Plyler* rights, you can:

- Work to pass state or local laws or policies such as Safe Zone resolutions (see above) that prohibit K-12 schools from collecting student immigration information.
- Work with your State Attorney General and State Department of Education to issue guidance making clear that schools should not collect student immigration data.
- Work with your State Attorney General and State Department of Education to issue guidance buttressing the right of all students to attend public school, regardless of immigration status, pursuant to *Plyler v. Doe*, your state constitution, and any applicable state laws.
- Make sure your school district does not collect immigration status in any educational records.
- If your school district begins collecting student immigration information or attempts to charge tuition to immigrant students, inform your state affiliate and NEA.

Under federal law, schools cannot turn over personally identifiable student records to police, federal agents, or immigration officials without the written consent of a parent or guardian, unless the information is requested through a subpoena or court order such as a judicial warrant.

- Schools can disclose students’ “directory information” without the family’s consent unless the school district is notified that the family has “opted out” from such sharing.
  - Make sure that your school district does not include place of birth in directory information. If it does, advocate to end the practice of collecting place of birth information and decline to provide it for your children.
  - Inform parents of their right to opt out of the directory information.

Remember that both federal and state and in many places local law protects students from discrimination based on race, religion, or national origin. This means that:

- Students cannot be discriminated against because of their birthplace, ancestry, culture or language.
- Students have the right to be free from bullying and harassment based on their race, religion, or national origin, and have the right to learn in an environment free from hateful symbols and derogatory comments.
- School officials have a legal duty to address hateful rhetoric and behavior.
- Schools may not retaliate against anyone—staff or students—who make complaints about racial, religious, or national origin harassment.

