

# Immigrant Students' Legal Rights: An Overview

*We've heard from educators who would like to know what steps they can take to ensure that front office staff are up-to-date about relevant policies...We continue to make sure all of our schools are aware of our efforts. I meet periodically with our principals on this issue and others to coordinate our efforts. It is expected that they are keeping their staff informed.*

– [Scott Kizner](#), Superintendent of Stafford County Public Schools, Virginia (former Superintendent of Harrisonburg Public Schools)

## Key Takeaways

- All students have the right to a free, public K-12 education, regardless of their immigration status, or that of their parents. Schools should not ask about immigration status for purposes of enrollment and should review registration forms for unnecessary or inappropriate questions. Schools also have an obligation to protect students' civil and privacy rights.
- School districts or states might have helpful resources on this issue.

## See this information online

### Immigrant Students' Rights: An Overview

- Online article: <http://www.colorincolorado.org/immigration/guide/rights>
- Download pdf: <http://www.colorincolorado.org/immigration/guide/rights-pdf>

Complete guide: <http://www.colorincolorado.org/immigration/guide>

Excerpted from *How to Support Immigrant Students and Families*.

## Overview

All students have the right to a free, public K-12 education, regardless of their immigration status or that of their parents. This includes access to services and programs such as free- and reduced-priced meals, English-language development classes, special education, and school activities. The American Federation of Teachers produced a fact sheet (2017) explaining:

*The 1982 U.S. Supreme Court case [Plyler v. Doe](#) ruled that undocumented students have a constitutional right to receive a free, public K-12 education. All students, regardless of their citizenship or residency status, are entitled to attend school. School districts that either prohibit or discourage students from enrolling in schools because they or their parents are undocumented immigrants may be in violation of federal law and the Equal Protection Clause (of the Fourteenth Amendment) to the U.S. Constitution...Schools **cannot** bar a student from enrolling because the student lacks a birth certificate or social security number or has a record that indicates a foreign place of birth. (p. 1)*

## Students' civil rights

In addition, a federal guide on supporting undocumented students published in 2015 notes:

*To comply with these Federal civil rights laws, such as Titles IV and VI of the Civil Rights Act of 1964, as well as the mandates of the Supreme Court, school districts must ensure that they do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians. (U.S. Department of Education, 2015, p. 7)*

## The rights of English language learners

In addition, English language learners (ELLs) and their parents have specific rights described in the following documents and in this article about [court rulings regarding ELLs](#) by Dr. Wayne E. Wright of Purdue University:

- [Dear Colleague Letter](#) (U.S. Department of Education and U.S. Department of Justice, via Colorín Colorado)
- [Fact Sheets in multiple languages: Schools' Civil Rights Obligations to ELLs and Parents](#) (U.S. Department of Education and U.S. Department of Justice, via Colorín Colorado)
- [Newcomer Toolkit: Helping Parents Understand Their Children's Rights](#) (U.S. Department of Education)



## English language learners and special education

English language learners identified with special education needs also have the right to receive **both** language services and special education services, and their parents have the right to receive information about evaluations, IEPs, support services, and other related topics in their home language. Immigration status does not impact students' or parents' right to access these services.

- [Special Education and English Language Learners: Resource Section](#) (Colorín Colorado)
- [Special Education and ELLs: A Conversation with Cristina Sánchez-López](#) (Colorín Colorado)
- [Using a Multi-tiered System of Support \(MTSS\) to Help English Language Learners Succeed](#) (Colorín Colorado)
- [Special Education and ELLs: Partnering with Parents](#) (Colorín Colorado)

## Recommended videos

- [ELLs with special education needs are entitled to both ELL and special education services](#) (Attorney Roger Rosenthal, Migration Legal Action Program)



# Ensure that all staff understand immigrant students' rights

## Why this matters

Students will interact with a variety of staff and personnel throughout the school. All of these adults have an obligation to protect students' privacy and access to an education. Violations of those rights could not only have an impact on the educational climate and cause a chilling effect on attendance or enrollment, but could also result in legal action.

**Note:** For additional information on early childhood settings, see our section on [young children in immigrant families](#).

## Tips for getting started

- Use the resources in this section to become more familiar with these laws.
- Consult with district officials or community partners on questions you have.
- Review forms and policies to see which may need to be updated (see related [recommendations in the following strategy](#)).
- Make sure you and your staff have up-to-date information on students' civil rights and educators' legal obligations to protect those rights.
- Provide professional development and training as needed.

## Keeping staff well-informed

Ensure that all K-12 school staff understand that:

- immigration status has no bearing on a student's right to:
  - enroll in elementary, middle, or high school
  - receive school services, such as free- and reduced-priced meals, special education, or ESL classes
  - participate in activities
  - receive medical treatment
- immigration status should not be requested, shared, or reported in public or private
- staff should not tolerate bullying by other students or adults in the building
- violations will not be tolerated and will be grounds for disciplinary action.



## Who needs to know this information?

It is critical to underscore that these guidelines apply to **all staff**, including:

- administrators, teachers, and paraprofessionals
- front office staff and counselors
- janitorial, nursing, bussing, and cafeteria staff
- substitute teachers and school resource officers/security personnel.

**Note:** Some independent athletic associations throughout the country require certain types of documentation from students who wish to participate on a high school athletic team, such as a social security number. You can read more about these policies, as well as one high school's creative approach to starting a soccer league for immigrant students who were determined to play, in this article from *The Hechinger Report*, [Immigrant Students Find Hope in Soccer, But Some States Won't Let Them Play](#).

## What if I find out a student is undocumented?

School personnel have a legal obligation to protect student privacy. **Staff members should not request, report, or share a student's immigration status.** There is no legal obligation to report someone with undocumented status. Furthermore, doing so could have a chilling effect on students' attendance at school and be a violation of students' privacy, educational, and civil rights.

## What if I find our school is not following these guidelines?

If colleagues are not following these guidelines, it may be because they do not know them. Start by speaking with an administrator and sharing your concerns and related resources. If that step does not affect how these policies are implemented, you may wish to consult with local immigration experts or national immigration organizations working on these issues.

## Recommended resources

### Fact sheets and briefs

- [Fact Sheet on Enrollment](#) (U.S. Department of Education, via Colorín Colorado)
- [School Enrollment for ELLs/Immigrants: Resource Section](#) (Colorín Colorado)
- Information about the Supreme Court case [Plyler v. Doe](#) (Colorín Colorado)
- [Infographic: Gathering and Managing Student and Family Information](#) (Association of California School Administrators)



- [Fact Sheet: Undocumented Students and Families in School](#) (American Civil Liberties Union)
- [Legal Guidance: Providing All Children Equal Access to Education, Regardless of Immigration Status](#) (California School Board Association)
- [Gathering and Handling Student and Family Information](#) (Office of the California Attorney General)
- [From Plyler to Sanctuary: Education Policies Promoting a Welcoming and Safe Environment for Immigrant Families](#) (Migration Policy Institute)
- [Position Paper on Undocumented Students: The Rights of Undocumented Students](#) (National Association of Secondary School Principals)
- [Enrollment Procedures](#) (Informed Immigrants)

### Let Us Learn: FAQs for educators

Another useful resource is the [FAQs for Educators](#) from [Let Us Learn: Schools for Every Child](#) entitled “How does a child’s immigration status affect their enrollment in school?” It addresses:

- students’ rights to a K-12 public education
- extracurricular activities and free- and reduced-price meals
- information/documents that can and cannot be requested during school enrollment.

**Note:** Let Us Learn, an initiative of the Lawyers’ Committee for Civil Rights Under Law, [sent letters to all state attorneys general](#) in the Fall of 2017 reminding them that all students have the right to enroll in K-12 public schools.

### Recommended videos

- [FAQ on Enrolling Immigrant Students: Information on Social Security numbers, proof of residency, birth certificates, immigration documents, and more](#) (Attorney Roger Rosenthal, Migrant Legal Action Program)
- [Why schools should not ask families or students about immigration status](#) (Lori Dodson, ESOL Teacher – Maryland)



# Review and update enrollment policies/forms

## Why this matters

As explained in our information on the [legal rights of immigrant students](#), schools are not permitted to (a) ask about immigration status for purposes of enrollment or (b) ask any questions that would dissuade immigrant students/families from enrolling or have any kind of chilling effect. If families are asked for such information, they may be concerned that the information could be shared with an immigration enforcement agency. As a result, schools may need to review registration forms. For example, a recent audit in California found at least 75 districts asking about immigration status in the enrollment forms (Californians Together, 2017).

It is critical that front office staff have accurate information about enrolling immigrant students. They will not only set the tone for families' experience, but also will have significant influence on whether the families feel comfortable sharing personal information – or even enroll at the school at all.

## Tips for getting started

- Review registration forms, home language surveys, or other forms related to school services/activities. Look for and remove any mention of immigration status.
- Become familiar with alternate documents permitted for school enrollment, including paperwork related to residence in the district, proof of age, and guardianship. If you are uncertain about what is required, check with administrators or the district's legal office.
- Explain to families what their rights are under federal privacy laws, detailed in the next section on protecting student privacy.
- Be mindful of the language used on other school forms, such as report cards or other family correspondence. Terms like “citizenship grade” or “legal student absences” can create fear and confusion among immigrant families (Mangual Figueroa, 2017).

## Social security numbers

Districts should avoid asking for Social security numbers; if they do, they must explain:

- how the social security number will be used and why the district is requesting it
- that providing the number is voluntary
- what kinds of paperwork will be accepted instead
- that **not providing a social security number will not bar students** from enrolling in/attending school (CSBA, 2017).





## Public charge: Free- and reduced-price meal applications

**Note:** Schools are receiving questions about whether free- and reduced-price meal enrollment would be counted against a green card application as part of the proposed “public charge” rules. **It will not.** You can read more about these [proposed rule changes in our section about the “public charge” rules](#).

## Recommended resources

- Districts who had to change enrollment practices after legal action: News headlines from [Connecticut](#) and [California](#)
- ELL placement/identification: Resources from [Colorín Colorado](#)
- Processing foreign records: Resources from [New York City](#) and [Miami-Dade Schools](#)

## Recommended videos

- [FAQ on Enrolling Immigrant Students: Social Security numbers, proof of residency, birth certificates, immigration documents, and more](#) (Attorney Roger Rosenthal, Migrant Legal Action Program)





# Protect student privacy

## Why this matters

Students have certain legal privacy protections regardless of immigration status. The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records for all students. The American Federation of Teachers notes that, “Under FERPA, schools are prohibited, without parental consent, from providing information from a student’s file to federal immigration agents if the information would potentially expose a student’s immigration status.”

According to [Illinois Legal Aid Online](#):

*FERPA does not allow schools to turn over a student’s file to federal immigration agents. The school can turn the file over if a parent consents and gives them permission or if the information does not contain the student’s immigration status. **School officials are non-reporters. They are not required to report undocumented immigrants.***

**Note:** The California School Boards Association shares the following reminder: “School leaders should review with legal counsel any request for student information submitted by Immigration and Customs Enforcement” (p. 4).

## Tips for getting started

- Review these regulations and your own school policies to see if any changes are needed.
- Determine if there are other privacy policies that should be reflected in school policy/procedures at the district, city, county, or state level.
- Ensure that staff have updated information regarding student privacy laws, particularly those who are working on student enrollment.

## Recommended resources

The following resources were published by institutions in California:

- [Infographic: Sharing Student and Family Information](#) (Association of California School Administrators)
- [Protecting Confidentiality of Records](#) (Stanford Law School and the California Charter School Association)
- [Legal Guidance: Providing All Children Equal Access to Education, Regardless of Immigration Status](#) (California School Boards Association)



Additional resources include:

- [Immigrant and Refugee Children: A Guide for Educators/School Staff](#) (Teaching Tolerance)
- [Protecting Student Information](#) and [State-Level Policies Regarding Privacy](#) (National Immigration Law Center)
- [Privacy Protocols and Confidentiality](#) (Informed Immigrants)



## Protecting personal information

[Muhidin Warfa](#), the Director of the Multilingual Department in Minneapolis Public Schools (MN), notes the following:

*It is important for schools to be very clear and open with families about how information that they provide to schools is stored and protected. Families are particularly concerned about providing information such as home address, immigration history, and forms such as the free/reduced lunch application that ask for a social security number. It can alleviate concerns if schools explain exactly how this information is used and protected.*



# Find out what resources your district and state have about serving immigrant students

## Why this matters

The challenges that immigrant students currently face speak to the importance of creating an environment in which (a) students and families feel welcome and comfortable in the educational setting and (b) all leaders and staff members understand students' rights and their obligations in protecting those rights.

To meet those needs, K-12 school and district leaders have addressed these issues in a variety of ways within (and beyond) their communities. Some leaders have focused on internal communication with staff, while others have made public statements regarding their immigrant students. Some districts that have such guidelines or resolutions have called themselves “sanctuary districts,” “safe zones,” or “safe havens.”

These statements vary in content, length, scope, and method of delivery. Some leaders have collaborated with their school boards to draft resolutions or formal statements supporting all students' access to education. These statements have been delivered in writing or in person through press conferences, events, or interviews with local media in families' languages.

Common themes in this communication include:

- a welcoming message affirming the value of immigrant families to the community
- an affirmation of all students' right to a free, public education, as well as their civil rights, regardless of immigration status
- a reminder of existing policies that address discrimination, bullying, and bias
- an explanation of steps for protecting student and family privacy
- clarification of policies related to immigration and law enforcement activity
- information on new or updated policies, such as the Los Angeles school board's [directive to the superintendent](#) to “develop a plan within 90 days that will train teachers, administrators and other staff on how to quickly respond to immigration enforcement agents”
- messages that try to prevent drops in enrollment or attendance due to family concerns.

These statements can serve as an important step in creating a climate of respect and trust for immigrant students, families, and [staff members](#) while also reiterating districts' legal obligations towards students and families.



The California School Board Association (2017) notes that,

*While these resolutions do not provide further or greater legal protection for students than already exists in the law, they do help school districts utilize their lawful discretion to establish policies and procedures to ensure that the district is providing equal access to public education to all students and to ensure the safety and security of its students attending school to the best of its ability. They also direct staff how to respond to potential immigration enforcement activities by ICE or other immigration enforcement officers or agents. (p. 5)*

## The role of states

States also have an important role to play in communicating related state and federal laws. For example, New York State has published a section on its website titled “[Information Regarding Recent Immigration-Related Actions](#)”, available in more than two dozen languages, as well as [guidance](#) related to the enrollment of undocumented and unaccompanied youth.

California has published multiple documents clarifying existing rules and also has gone beyond what previously existed to create new policies, guidelines, and models for districts to use as they determine their policies at the local level.

In addition, California passed a statewide law, [AB 699](#), increasing protections for immigrant students. You can see fact sheets and infographics about the law in [English and Spanish here](#) and from the [Immigration Legal Resource Center](#). The following documents were published in California as well:

- [Legal Guidance: Providing All Children Equal Access to Education, Regardless of Immigration Status](#) (California School Board Association, or CSBA)
- [Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California’s K-12 Schools in Responding to Immigration Issues](#) (California Attorney General)

Learn more from Informed Immigrants’ section on [Understanding state/local immigration-related policies](#).

## Tips for getting started

- Find out what kinds of resources, documents, and statements your district and state already have available and if those resources are available in multiple languages.



- Keep in mind that:
  - school districts are legally obligated to share information in a language that families understand (see multilingual versions of district statements in the “Recommended resources” below).
  - school and district leaders may not realize the extent to which immigration policies are impacting families locally, as seen in [this article written for Colorín Colorado](#). Helping leaders better understand the student population is an area in which educators working with ELLs and immigrant students can have a significant impact.
  - many of these strategies are appropriate for early childhood settings as well.
- In school districts that have refrained from making a formal statement about immigration-related policies, educators might find it helpful to communicate the following kinds of information to decision-makers:
  - examples from other schools or districts, such as statements of support, resolutions, and other documents
  - information on the impact of immigration policies on local students
  - related policies at the district, city, county, or state level that might impact immigrant students.

## How to frame the issue

Consider framing these issues in terms of student well-being and learning as a helpful starting point. ELL administrator Kristina Robertson notes,

*As a public leader you always worry about the consequences of a decision, a statement, or an action and you want to examine issues from multiple perspectives. Who might gain from a decision? Who might be harmed?*

*As we discussed our district support, we recognized that the heart of the matter was **keeping students safe and supporting their continued learning**. This meant that we needed to measure our actions by how they related to supporting the students’ learning and social-emotional well-being. This has been helpful in empowering leaders as they make decisions in response to new situations.*



## Recommended resources

The following list shares a sample of documents published by districts around the country.

### School district resources: FAQs and Guides

- [Immigration FAQ in 10 languages](#) (Denver Public Schools)
- [Immigration and School Enrollment FAQ](#) (Ann Arbor, Michigan)
- [Education and Immigration Resource Guides](#) (Los Angeles Unified School District)

### School district resources: Statements and resolutions

- [Des Moines Public Schools Statement](#)
- [School Board Resolution in 4 languages](#) (Denver Public Schools)
- [School Board Resolution](#) (Ann Arbor Public Schools)
- [School Board Resolution](#) (Sacramento City Unified School District)
- [Sample resolution](#) (California School Board Association)
- [Sample resolution](#) (National Education Association)

### Related resources

- [Practice Advisory: The Legal Authority for “Sanctuary” School Policies](#) (National Immigration Law Center, 2018)
- [“Safe Haven” or “Sanctuary” Resolutions](#) (Informed Immigrants)
- [Position Paper on Undocumented Students: Recommendations for State, District, and School Leaders](#) (National Association of Secondary School Principals)

### Related news items

- [What it means when a district declares itself a 'safe haven' or 'sanctuary'](#) (EdSource, August 2017)
- [School districts step up protections for immigrant students](#) (EdSource, February 2017)

## Recommended videos

- [Portland Public Schools: Welcoming Immigrants](#) (Portland, Oregon)
- [All Are Welcome in the Ann Arbor Public Schools](#) (Ann Arbor, Michigan)





## Engaging in important conversations

**Illinois:** Teachers from McLean County Unit District No. 5 in Illinois [spoke to their school board](#) in the Fall of 2017, advocating for the board to pass a measure declaring the district “a safe learning environment for students regardless of their immigration status.”

**Colorado:** Denver district leaders [have collaborated](#) with advocacy groups, the teachers’ union, and parent organizations to develop and communicate messages in support of immigrant families. The work in Denver has also resonated beyond the district. Respondents to a [2017 Colorín Colorado survey](#) about how schools are supporting immigrant students noted:

*“We like Denver Public Schools communication – ‘Immigration Fact Sheet’ – and are encouraging our district to release a version.”*

*“The Denver Public Schools had questions and answers on their website and all were translated into several languages. I shared that with our school board members and building principal and other district administrators. I would like to see something similar in our district.”*

**Virginia:** When reflecting on both the positive and negative responses to his actions as superintendent of Harrisonburg schools, [Scott Kizner](#) (now the leader of Stafford County Public Schools) writes,

*I recognize that educational leaders work and live in different socio-cultural-political environments. Each leader has to make a personal judgment on what they believe is in the best interest of their children. I am fortunate to be in a community that appreciates the diversity, and the mayor and I put a video together emphasizing our rich tradition of acceptance in Harrisonburg. I...have received criticism from a few but my focus has to be our students and doing what I believe is in their best interest. The school board and community at large have been very supportive.*

