



Undocumented Students and Families: The Facts

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Student Rights

What rights do undocumented students have?

Undocumented students between the ages of 6-18 have a right to attend school in California. They are also mandated to attend school pursuant to the compulsory attendance laws. (Educ. Code, § 48200.) The U.S. Supreme Court has held that no state may deny access to a basic public education to any child residing within the state, whether residing in the U.S. legally or not. (*Plyler v. Doe*, 457 U.S. 202 (1982).) Further, all students have a right to be in a public school learning environment free from discrimination, harassment, bullying, violence, and intimidation. (Educ. Code, §§ 220, 234 *et seq.*)

What student information do schools currently collect, and would it provide insight into immigration status?

Unless a student is a nonimmigrant, international student enrolled in an educational program specifically under F-1 or M-1, school districts are not required to collect information regarding a student's immigration or legal status. Schools are only required to collect information to satisfy admission requirements which are limited to proof of residency, proof of age, and immunization requirements. No admission requirements require an individual to provide proof of legal immigration status (or any information about immigration status), place of birth, or social security numbers. (Educ. Code, § 48204.1.)

What student information do we collect on adult education students?

In particular cases, school districts are required to obtain information on adult education students. For example, in counties where U.S. District Courts are located, the city or county superintendent of schools is required, on a monthly basis, to obtain the names of persons who have filed their intention to become citizens of the U.S. or their petitions for naturalization. (Educ. Code, § 52550.) The superintendent is then required to send notices to these individuals of the authorization the governing board has in providing classes in citizenship under particular circumstances. (Educ. Code, § 52551 *et seq.*) The Capistrano Unified School District does not currently offer or operate these classes.

If we receive a Public Records Act ("PRA") request for student data, what information are

we obligated to share and protect?

The Family Educational Rights Privacy Act (“FERPA”) and California Privacy Laws supersede the PRA and require that the school district maintain the personally identifiable information in education records related to students confidentially. (20 U.S.C. §1232g; 34 CFR § Part 99.) Any and all *private* records, including emails, student files, and personnel information, are generally exempt from disclosure. All student records, including emails and cumulative student files, are generally exempt from disclosure or subject to redaction to prevent disclosure of personally identifiable information.

Staff Rights

Must we allow Immigration and Customs Enforcement (“ICE”) and other government authorities on campus?

This depends. School districts have the right to limit disruptions to the learning environment and to ensure the safety of their staff and students while on campus, which may include denying an individual from accessing a campus during school hours. (Educ. Code, §§ 32212, 35160.) In the unlikely event that ICE or other government authorities decide to pursue immigration-related investigations on school campuses, school staff should follow appropriate District procedures applicable to any visitor on campus, which may include, but are not limited to: (1) requesting that the agent sign in at the front desk; (2) requiring that the agent provide valid identification and statement of purpose; and (3) receiving approval from the site administrator or Superintendent prior to entering any non-public area of campus.

Immediate access to the student should be given if the agent has a valid warrant or a court order. If you are unclear about a document, contact the Executive Director, Safety and Student Services.

School districts that permit nonimmigrant, international students (who are in the U.S. under an F-1 or M-1 visa) to enroll in programs through ICE’s “Student and Exchange Visitor Program” (“SEVP”) are subject to onsite visits from SEVP officials at any time and must provide officials with certain records on such students. (8 CFR § 214.3(g) and (h)(3)(iv).) The SEVP, however, does not have the authorization to review the records of students suspected of being undocumented or students who are not participating in the SEVP.

Are we required to allow ICE, police, or other government authorities to have access to student records?

Access to student records should only be allowed if the requesting agency has a valid court order or subpoena in compliance with FERPA or California privacy laws. (8 U.S.C. § 1225; 34 CFR § 99.31(a)(9)(i); Educ. Code, §§ 49076; 49077.) The release of records is not immediate. The school district must make reasonable efforts to notify the parent or eligible student in advance of disclosing the documents so that the parent or eligible student may seek protective action, unless the court order or subpoena relates to a federal jury

investigation or law enforcement purpose, or relating to domestic or international terrorism. (34 CFR § 99.31(a)(9)(ii); Educ. Code, § 49077.) If you are unclear about a document, contact the Executive Director, Safety and Student Services. In addition, the USA Patriot Act added an exception to FERPA to mandate the disclosure of educational records to a federal Attorney General or Assistant Attorney General through a judicial order based on an investigation of suspected terrorist activities. (20 U.S.C. § 1232g(j).)

Parent Rights

All parents, without respect to their legal status, have a right to participate in their child's education and are encouraged to do so. Immigration status information, including proof of legal residency, is not a prerequisite to the enrollment of their child in school.

Are undocumented parents required to undergo fingerprinting in order to volunteer at school?

School districts may vary in their fingerprinting policies for volunteers. Some require that all volunteers undergo fingerprinting, while others only require the fingerprinting of parent volunteers where the volunteer is not under the direct supervision of a District staff member. Parents should be reassured that the purpose of the fingerprinting requirement is confidential, solely for the use of the District to ensure the safety of students and staff (i.e. that the volunteer has not been convicted of a sex or drug offense with a minor). Any fingerprinting requirement must be enforced in an equal manner for all parents/volunteers.

In the District, there are volunteer opportunities that do not include fingerprinting; however, for volunteer opportunities at school sites with direct interaction with students, individuals will need to engage in fingerprinting.

If a parent is in custody as the result of an immigration enforcement, are districts required to release the student to ICE or other immigration officials?

No. School districts are not required to release students into the custody of ICE if their parent(s) are in custody as the result of an immigration enforcement action. Parents with such concerns should make advance arrangements with relatives or friends to ensure that their children are released to an authorized caregiver or adult, and should ensure that school districts are aware of this arrangement in the emergency information card submitted to schools. All parents are encouraged to have such information on file, in the event of any type of emergency or unforeseen circumstance, and having such information on file is not an indicator of immigration status.

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