



U.S. Department of Justice

Civil Rights Division



U.S. Department of Education

Office for Civil Rights
Office of the General Counsel

May 6, 2011

Dear Colleague:

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. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. *See* 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

Additionally, the United States Supreme Court held in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), that a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise. Denying “innocent children” access to a public education, the Court explained, “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. . . . By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Plyler*, 457 U.S. at 223. As *Plyler* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student’s entitlement to an elementary and secondary public education.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you 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. Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).¹ For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district.

A school district may require a birth certificate to ensure that a student falls within district-mandated minimum and maximum age requirements; however, a district may not bar a student from enrolling in its schools based on a foreign birth certificate. Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. *See* 5 U.S.C. §552a (note).² If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish to review the documents your district requires for school enrollment to ensure that the requested documents do not have a chilling effect on a student's enrollment in school. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the

¹ Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child's parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(i).

² Federal law provides for certain limited exceptions to this requirement. *See* Pub. L. 93-579 § 7(a)(2)(B).

enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

Please contact us if you have any questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, or the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov. You may also visit <http://wdcrobcopl01.ed.gov/CFAPPS/OCR/contactus.cfm> for the OCR enforcement office that serves your area. For general information about equal access to public education, please visit our websites at <http://www.justice.gov/crt/edo> and <http://www2.ed.gov/about/offices/list/ocr/index.html>.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

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/s/

Thomas E. Perez
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Questions and Answers for School Districts and Parents

Documentation

Q - 1. Should a district inquire into the immigration or citizenship status of a student or parent as a means of establishing the student's residency in the district?

A - 1. No. Immigration or citizenship status would not be relevant to establishing residency in the district.

Q - 2. All students, except homeless students as provided by Federal statute, are required to show current residency in a district in order to enroll in a district school. How can undocumented students meet these requirements?

A - 2. Districts may establish bona fide residency requirements, and thus may require that all prospective students, except homeless students as defined and provided by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 *et seq*, furnish proof of residency within the district. States and districts have their own rules on what forms of documentation they will accept. Depending on the state or district, acceptable proof of residency may be items such as a mortgage or lease document, or a telephone or utility bill. States and districts, however, cannot apply different rules to children based on their or their parents' or guardians' actual or perceived race, color, national origin, immigration or citizenship status, or other impermissible factor.¹ All students must be treated equally.

Q - 3. How can a school district distinguish between (a) information that it should or must collect, and (b) information that it may not collect because doing so may discourage enrollment or attendance?

A - 3. There is usually only minimal information that a district may need to collect before a student enrolls, such as proof of age, immunization history, and residency within the district. It is up to the state or district to make that determination. In doing so, states and districts should assess their current policies to determine whether they are doing anything that may have the

¹Title IV of the Civil Rights Act of 1964, which is enforced by the Department of Justice, prohibits school districts from taking actions that deprive students of equal protection of the laws. Title VI of the Civil Rights Act of 1964, which is enforced by the Department of Education, and when appropriate by the Department of Justice, prohibits discrimination on the basis of race, color, or national origin.

effect, albeit unintended, of discouraging the enrollment of undocumented children, such as asking for immigration papers. Such practices and policies, once identified, should be changed to eliminate any possible chilling effect on enrollment.

Q - 4. In light of the Dear Colleague letter, should districts refrain from asking for students' social security numbers?

A - 4. The federal government does not prohibit states or districts from collecting the social security numbers of prospective or current students. States and local school districts must decide, however, whether they have a legally permissible need to collect this information. If they choose to collect social security numbers, they must follow federal laws regulating the use of that information. For example, under governing federal laws, a district collecting social security numbers must inform individuals that the disclosure is voluntary, and must explain both the statutory or other basis for seeking the numbers, and how the district intends to use the numbers. See 5 U.S.C. § 552a (note).

As the Dear Colleague letter makes clear, a district cannot deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. Other good alternatives to collecting social security numbers exist. For example, a district seeking to have student identification numbers could decide to assign a randomly selected number to each student. In this way, the district avoids any chilling effect that a request for social security numbers may have on the enrollment of students because of their race, color, national origin, citizenship, or immigration status.

Q - 5. In order to avoid discouraging enrollment, should school districts enroll any child who comes their way and ask for documentation later, after the child is enrolled?

A - 5. As noted above, school districts may generally require that prospective students furnish proof of residency in a district prior to enrollment. Districts may also choose to wait until students are already enrolled before asking for any additional documentation that may be required under state or federal law, such as student demographic data. By choosing to wait to collect additional information that is not necessary for enrollment, districts can create a more welcoming atmosphere for all prospective students.

Q - 6. Once in possession of personal information about a student, are there circumstances when a school district may disclose information from a student's education records without the consent of the student or a parent?

A - 6. There are circumstances when a school district may disclose information from a student's education records, *but these are limited and unlikely to be applicable in the majority of situations school districts confront.* The Family Educational Rights and Privacy Act of 1974 (FERPA) generally prohibits school districts that receive federal funds from the Department of Education from disclosing student information that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). See 20 U.S.C. §1232g. There are some limited exceptions to FERPA, *see* 34 C.F.R. §99.31, as well as circumstances under which federal immigration laws require or permit a school district to provide specific information about a student to another federal, state, or local government entity. One such circumstance is where the issuance of a non-immigrant visa to a student—and the maintenance of that student's non-immigrant status—is conditioned on the student's attendance at a specific school. Note, that in that case, a school district would have preexisting information about the student that he or she would have presented to the school in order to obtain the underlying visa, and so the school would not have any reason to initiate a request for information about immigration status.

Q - 7. The Dear Colleague letter states that schools may require parents to provide copies of students' birth certificates to verify that students meet appropriate age criteria. What if a parent is reluctant to provide a copy of his or her child's foreign birth certificate, fearing that doing so would lead to questions about the child's or the parent's immigration or citizenship status?

A - 7. School districts are encouraged to take proactive steps to educate parents about their children's rights and to reassure them that their children are welcome in district schools. For example, state law may permit a district to use a birth certificate or baptismal record to establish the age of a child. If so, a district could publicize that it will use a foreign birth certificate or baptismal record in the same manner that it will use a United States birth certificate or baptismal record: that is, solely to establish the age of a child.

With some exceptions for homeless children, as defined and provided by Federal statute, all students, regardless of their immigration or citizenship status, may be required to meet state and local laws that require them to show proof of age, immunizations or proper immunization

waivers, and residency in the district. However, as previously emphasized, the rules and standards for documentation must be the same for everyone, regardless of race, color, national origin, immigration or citizenship status. A foreign-born child who is unable or unwilling to furnish a birth certificate should have the same options to enroll in school and should be treated no differently than a U.S. citizen child who does not have or otherwise may not be able to produce a birth certificate.

Additional Proactive Support Measures That Districts Can Take

Q - 8. What can schools do proactively to show parents that their children are welcome, regardless of their immigration or citizenship status?

A - 8. The Dear Colleague letter encourages states and districts to review enrollment policies and practices carefully to make sure they are consistent with the law and do not have a chilling effect on the willingness of parents to enroll their children. Any problems should be corrected.

In addition, we encourage districts to be proactive in notifying parents of their rights to send their children to public school. For example, districts can conduct outreach to communities to inform parents that all students who are residents in the district are welcome to attend the district's schools.

Q - 9. Should districts provide staff training on how to avoid violating the law in this area?

A - 9. Staff training at the school and district level is encouraged. Ultimately, the state and district have the legal responsibility to ensure that they are complying with federal law. Staff training helps facilitate that compliance.

Fact Sheet

Information on the Rights of All Children to Enroll in School

All children in the United States are entitled to a basic public elementary and secondary education regardless of their race, color, national origin, citizenship, immigration status, or the status of their parents/guardians. School districts that either prohibit or discourage children from enrolling in schools because they or their parents/guardians are not U.S. citizens or are undocumented may be in violation of Federal law.

Below are some examples of acceptable enrollment policies — including proof of residency in the school district — as well as policies that may not be used by schools to deny enrollment to your child.

- **Proof of Residency in the School District.**
 - School officials may require you to provide proof that you live within the boundaries of the school district. Copies of phone and water bills, lease agreements, or other documents may be requested for this purpose. A school district's requirements to establish residency must be applied in the same way for all children.
 - However, a school district may not ask about your or your child's citizenship or immigration status to establish residency within the district, nor may a school district deny a homeless child (including a homeless child who is undocumented) enrollment because he or she cannot provide the required documents to establish residency.

- **Birth Certificates.**
 - In order to show that a student falls within the school district's minimum and maximum age requirements, school officials may request a copy of your child's birth certificate.
 - However, a school district may not prevent your child from enrolling in school because he or she has a foreign birth certificate.

- **Social Security Numbers.**
 - Some school districts request a student's social security number during enrollment in order to use it as a student identification number. A school district may request a student's social security number, but only if it (1) informs the student and parent

that providing it is voluntary and (2) explains for what purpose the number will be used.

- However, a school district may not prevent your child from enrolling in school if you choose not to provide a social security number.

- **Race or Ethnicity Data.**

- School districts have some Federal and state obligations to report race and ethnicity data about the students in their schools. A school district may request that you provide your child's race or ethnicity for this purpose.
- However, a school district may not bar your child from enrolling if you choose not to provide your child's race or ethnicity.

If you want to learn more about your rights and the rights of your child when enrolling in public school, or if you believe that a school district is violating Federal law, you may contact the following government agencies:

- Department of Justice, Civil Rights Division, Educational Opportunities Section
Telephone: (877) 292-3804 (toll-free)
Fax: (202) 514-8337
Email: education@usdoj.gov

- Department of Education, Office for Civil Rights
Telephone: (800) 421-3481
Email: ocr@ed.gov

If you wish to fill out a complaint form online with the Department of Education, you may do so at <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

