

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.