

# Protections for Immigrant Students in Washington's K–12 Public Schools

## OVERVIEW

Public schools have a constitutional and moral obligation to provide a free, high-quality public education to all students residing within their boundaries. This includes eligibility for programs and services provided by public schools. State and federal law prohibit public school districts from discriminating on the basis of race, color, or national origin. State law further prohibits discrimination on the basis of citizenship or immigration status.

Further, Washington public schools must not initiate engagement with federal immigration authorities for the purpose of sharing student information. It is inconsistent with our state and federal constitutional mandates to serve every student. Should immigration authorities initiate engagement with a school district, the school district must follow the steps that are outlined in state guidance (see *Immigration Enforcement on School Campuses*, page 8).

## KEY PRACTICES FOR PUBLIC SCHOOLS

Topic	Do	Don't
<b>Enrollment</b>	Enroll all students, regardless of immigration or citizenship status, in a timely manner.	Deny admission or continuing enrollment to a student on the basis of immigration or citizenship status or treat a student differently to determine their immigration status.
<b>Data &amp; Record Collection</b>	Collect only data and records required for enrollment purposes and necessary for a student to receive educational services. Consider whether data/records must be retained by a school or if only initial review for verification is needed.  Provide alternative ways for families to verify that a student meets age requirements.	Require or create an impression that birth certificates or social security numbers are required for enrollment or continuing enrollment.
<b>Services</b>	Provide services to all enrolled students, regardless of citizenship or immigration status.	Engage in any practices that "chill" or inadvertently "chill" a student's right of access to school and educational services.



Topic	Do	Don't
	<p>Adopt policies and practices to ensure that undocumented students have access to all aspects of the regular school program.</p>	
<p><b>Student Privacy</b></p>	<p>Be aware that schools have no legal authority to enforce U.S. immigration laws.</p> <p>Have a policy in place for responding to immigration enforcement actions impacting your school campus(es).</p>	<p>Require students or parent(s)/guardian(s) to answer questions or provide documentation which discloses their citizenship status.</p>

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# PROTECTIONS IN PLACE

## Access to Public Education

### *Federal Protections*

Title VI of the Civil Rights Act of 1964 is federal law prohibiting school districts from discriminating on the basis of race, color, or national origin.<sup>1</sup>

The U.S. Supreme Court ruled in [\*Lau v. Nichols\*, 414 U.S. 563 \(1974\)](#), that in order to comply with the legal obligations under Title VI of the Civil Rights Act of 1964, school districts must take affirmative steps to ensure that students with limited English proficiency (LEP) can meaningfully participate in their educational programs and services.

Under the U.S. Supreme Court decision [\*Plyler v. Doe\*, 457 U.S. 202 \(1982\)](#), all children residing in the U.S. have the right to attend public primary and secondary schools, regardless of their immigration status. Denying public school enrollment to undocumented children is a violation of the Equal Protection Clause of the 14th Amendment.

In 2015, the U.S. Department of Education issued a [Dear Colleague Letter \(DCL\)](#) that summarized the history of federal legislation and court rulings related to LEP students and provided guidance for state educational agencies (SEA) and school districts on how to be in compliance with said requirements.

This guidance includes ensuring that public schools do not:

- 1) Deny admission to a student during initial enrollment or at any other time on the basis of the student's citizenship status.
- 2) Treat a student differently to determine residency in the district. Immigration or citizenship status is not relevant to establishing residency in a school district, and inquiring about this status in the context of establishing residency is unnecessary and may have a chilling or a discouraging effect on student enrollment ([DCL Q&A, Question 1, 2015](#)).
- 3) Engage in any practices to "chill" the right of access to school.
- 4) Require students or parent(s)/guardian(s) to disclose or document their immigration status.
- 5) Make inquiries of students or parent(s)/guardian(s) that may expose their undocumented status.

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<sup>1</sup> [42 U.S.C. § 2000d](#).

- a) Age Verification: A school should not use a student's birth certificate or other documentation provided by a parent(s)/guardian(s) to establish a student's age as a basis for inquiring into the immigration status of the student, parent(s)/guardian(s), or other family members. Such requests could have a discouraging effect on the enrollment of a student on the basis of immigration status. School districts should make parent(s)/guardian(s) aware of alternatives that exist as part of their efforts to ensure a welcoming and inclusive environment for all students ([DCL Q&A, Question 5, 2015](#)).
- 6) Require social security numbers from all students, as this may expose undocumented status.
- a) Social Security Numbers: A school district cannot deny enrollment if a student or a parent(s)/guardian(s) chooses not to provide the student's social security number.<sup>2</sup> Districts may use alternatives to requesting social security numbers from students. 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 state or district would avoid 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 ([DCL Q&A, Question 7, 2015](#)).
    - i. A school district that opts to request social security numbers should make clear in all enrollment and registration documents, including forms, websites, and communications with parent(s)/guardian(s), that the provision of the child's social security number is voluntary, and that choosing not to provide a social security number will not bar a child's enrollment ([DCL Q&A, Question 7, 2015](#)).
  - b) A school district may not request a student's or parent(s)/guardian(s)'s social security number unless it (1) informs the individual that disclosure is voluntary, (2) provides the statutory or other legal basis for why the district is requesting the number, and (3) explains how the district will use the number.<sup>3</sup>
    - i. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number. If the child(ren) are members of a household receiving assistance under certain federal programs (SNAP, TANF, FDPIR), the family may use the case number for those programs on the application in lieu of names of all

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<sup>2</sup> Privacy Act of 1974, as amended 5 USC § 552a.

<sup>3</sup> *Id.*

household members, household income information and social security number.<sup>4</sup>

Changes in the F-1 (Student) Visa<sup>5</sup> Program do not alter the *Plyler* obligations to undocumented children. These changes apply only to students who apply for a student visa from outside the U.S.

Finally, school personnel—particularly building principals and those involved with student intake activities—should be aware that they have no legal obligation to enforce U.S. immigration laws.

### *State Protections*

Under the Washington State Constitution, the state must provide education for all children residing within the borders of the state in a non-discriminatory manner.<sup>6</sup> Further, state law prohibits school districts from discriminating on the basis of race, color, national origin, citizenship, or immigration status.<sup>7</sup> Like all children in Washington, undocumented students that are 8 years of age and younger than 18 must be enrolled in school or another approved education program.<sup>8</sup> Districts must enroll any child aged 6 and 7 and those meeting kindergarten eligibility<sup>9</sup>, when requested by parent(s)/guardian(s). Preschoolers, including undocumented children, may participate in educational programs offered by their resident school district if they meet the eligibility criteria (for example, special education services, Transition to Kindergarten).

In 2019, the Legislature enacted the *Keep Washington Working Act (KWW)*<sup>10</sup> to ensure the state of Washington “remains a place where the rights and dignity of all residents are maintained and protected in order to keep Washington working.”<sup>11</sup> Under the KWW, school districts are required to adopt local policies in alignment with [guidance from the Attorney General’s Office \(AGO\)](#) to ensure public schools remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.<sup>12</sup>

The AGO’s policies address:

- 1) Applicability of policies related to immigration enforcement;
- 2) Access to schools;
- 3) Immigration enforcement on school campus
- 4) Gathering immigration related information;

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<sup>4</sup> [7 C.F.R. § 345.6\(a\)\(6\)](#)

<sup>5</sup> “F-1 Visa” is a U.S. visa for foreign national students who wish to attend certain types of educational institutions in the U.S., including high schools and private elementary schools.

<sup>6</sup> [Wash. Const. art. IX § 1](#); see also [McCleary v. State, 173 Wn.2d 477, 520 \(2012\)](#).

<sup>7</sup> [RCW 49.60.010](#); [RCW 28A.642.010](#)

<sup>8</sup> [RCW 28A.225.010\(1\)](#).

<sup>9</sup> [WAC 392-355-010](#).

<sup>10</sup> [Laws of 2019 ch. 440, E2SB 5497](#).

<sup>11</sup> *Id.*

<sup>12</sup> [RCW 43.10.310](#)

- 5) Responding to requests for information; and
- 6) Use of School Resources.

For specific guidance and the applicable model policies, see pages 6–9 of the AGO’s guidance, [Keep Washington Working Act: Guidance, Model Policies, and Best Practices for Public Schools](#).

## Student and Family Data Privacy

### *Federal Protections*

Consistent with [Plyler v. Doe](#),<sup>13</sup> K–12 schools are not required by federal law to collect information about student immigration status, including social security numbers, and in fact, should refrain from requesting information that may have a chilling effect on student enrollment. Neither schools nor the Office of Superintendent of Public Instruction (OSPI) collect students’ citizenship status as part of required data collection. The data collection for purposes of determining Title III funding and EDFacts<sup>14</sup> does ask about birth country, which is separate from citizenship. However, schools may institute policies that limit the disclosure of sharing place of birth information.

The [Family Educational Rights and Privacy Act \(FERPA\)](#)<sup>15</sup>, prohibits K–12 public schools from releasing a student’s educational records or personally identifiable information contained in such records without written consent from a parent(s)/guardian(s) or adult student, unless an exception to this general rule exists. FERPA does not contain an exception for federal immigration agencies to access student educational records or personally identifiable information (PII). Notable exceptions include directory information or compliance with a judicial order or lawfully issued subpoena.

- **Directory Information:** Directory information may only be disclosed with parental consent if a school has given public notice to parent(s)/guardian(s) of the types of PII that it has designated as directory information and the process, including period of time, for parent(s)/guardian(s) to opt out of certain directory information disclosures.<sup>16</sup> Districts should refer to their adopted FERPA policy to review the district’s definition of directory information.
- **Lawfully Issued Judicial Order or Subpoena:** A school district may disclose a student’s PII if the disclosure is to comply with a judicial order or lawfully issued subpoena. With limited exception, **prior to disclosing** the information the district must make a reasonable effort to notify the family of the order or subpoena, so that the family may seek protective action.<sup>17</sup>

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<sup>13</sup> 457 U.S. 202 (1982).

<sup>14</sup> EDFacts is a U.S. Department of Education (ED) initiative to collect, analyze, and promote the use of high-quality, pre-kindergarten through grade 12 data.

<sup>15</sup> [20 U.S.C. § 1232g](#).

<sup>16</sup> [20 U.S.C. § 1232g\(a\)\(5\); 34 CFR §99.31\(a\)\(11\)](#).

<sup>17</sup> [20 U.S.C. § 1232g\(b\)\(5\); 34 CFR §99.31\(a\)\(9\)](#).

## State Protections

Under state law a school may not release the education records of a student without the written consent of the student's parent(s)/guardian(s),<sup>18</sup> except as authorized by [RCW 28A.600.475](#) and FERPA. School districts are required to establish procedures that include: "Prohibiting the release of student information without the written consent of the student's parent or guardian, after the parent or guardian has been informed what information is being requested, who is requesting the information and why, and what will be done with the information."<sup>19</sup> The procedures must be in compliance with FERPA.

School districts may participate in the exchange of information with law enforcement to the extent permitted by FERPA, such as when directed by court order or pursuant to any lawfully issued subpoena. Except as provided in RCW 13.40.480, parent(s)/guardian(s) and students shall be notified by the school district of all such orders or subpoenas in advance of compliance with them.<sup>20</sup>

As required by KWW, the Attorney General's Office developed model policies for school district to respond to requests for information for immigration enforcement purposes. These policies address concerns related to notifying families when information is requested, seeking alternative documentation, and when information can be withheld in absence of a court order or judicial warrant.<sup>21</sup>

## Immigration Enforcement on School Campuses

Washington public schools initiating engagement with federal immigration authorities for the purpose of sharing student information is inconsistent with state and federal constitutional mandates to serve every student. The Attorney General's model policies direct that school district policies prohibit participation or aid immigration enforcement with regard to enforcement activity against students and their families, staff, and volunteers.<sup>22</sup>

If anyone attempts to engage in immigration enforcement on or near school grounds, school staff shall immediately alert and direct the person to the school principal or authorized designee. School staff shall request that any person desiring to communicate with a student, enter school grounds, or conduct an arrest first produce a valid court order or judicial warrant. The principal will forward the request to the district superintendent and/or legal counsel who shall review the court order or judicial warrant for signature by a judge and validity. Additionally, schools shall not permit access to information, records, or areas beyond that specified in the court order, judicial warrant, or other legal requirement.

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<sup>18</sup> [RCW 28A.605.030](#).

<sup>19</sup> *Id.*

<sup>20</sup> [RCW 28A.600.475](#).

<sup>21</sup> See p.6-9 of the AGO's guidance, [Keep Washington Working Act: Guidance, Model Policies, and Best Practices for Public Schools](#).

<sup>22</sup> See p.6-9 of the AGO's guidance, [Keep Washington Working Act: Guidance, Model Policies, and Best Practices for Public Schools](#).



In all cases, the school district should make a reasonable effort to notify the parent/guardian of any immigration enforcement actions concerning their student, including contact or interview.

## Meal Programs for Students

### *Citizenship and Legal Status*

United States citizenship or immigration status is not a condition of eligibility for free and reduced-price meal benefits in schools. School districts must apply the same eligibility criteria for citizens and non-citizens. A school district may not request that applicants provide information regarding their citizenship. The U.S. Department of Agriculture (USDA) has determined the Child Nutrition Programs are not subject to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which restricts certain welfare and public benefits for undocumented individuals.

### *Free School Meal Programs*

With recent expansions in meal access by the Washington State Legislature, 70% of Washington's students have access to school meals with no out-of-pocket cost to the student or their family. In the 2024–25 school year, more than 1,500 schools offer free breakfast and lunch for all students at no cost, regardless of the student's income. This program operates school-wide and does not require a student or their family to provide personal income information to the student's school.

## OTHER CONSIDERATIONS FOR STUDENTS AND FAMILIES

### Financial Aid for Postsecondary Education

#### *Federal Financial Aid*

Undocumented students, including Deferred Action for Childhood Arrivals (DACA) recipients, are not eligible for federal student aid but may still be eligible for other types of student financial aid (state aid, school aid, or private scholarships).<sup>23</sup>

A parent/guardian's citizenship or immigration status does not affect a student's eligibility for federal student aid. The Free Application for Federal Student Aid (FAFSA) [form](#) does not ask about the parent/guardian's citizenship status and [the federal Higher Education Act prohibits the use of data](#) for any purpose other than determining and awarding federal financial assistance. However, in light of the priorities publicly outlined by the Trump Administration, students and families should be aware of the potential risks associated with providing sensitive

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<sup>23</sup> See U.S. Department of Education, Federal Student Aid: [Eligibility for Non-U.S. Citizens](#).

information to the U.S. Department of Education. Please see [the National College Attainment Network's November 2024 statement](#) on this matter.

### *State Financial Aid*

All Washington resident college bound students, regardless of immigration or citizen status, may apply for state aid through the [Washington Application for State Financial Aid \(WASFA\)](#) administered by Washington Student Achievement Council (WSAC). Students and families who have concerns about submitting personal information to the federal government when applying for federal financial aid may consider applying for state aid through [the Washington Application for State Financial Aid \(WASFA\)](#), which is available to undocumented students. The purpose of the WASFA is to provide eligibility information to colleges and universities in Washington state that offer the Washington College Grant and the College Bound Scholarship. WSAC shares application information with campuses listed by the student so those schools may determine the student's eligibility for resident tuition and financial aid. Schools are not permitted to use the information for other purposes or share the data with other parties, unless required by a lawfully issued subpoena or judicial order.

## OTHER CONSIDERATIONS FOR SCHOOL DISTRICTS

### Student Health Implications

School districts should be mindful of the perceived and actual risks for undocumented families regarding access to Medicaid (Apple Health) and health clinics when enforcing school related health care requirements, such immunization compliance under [RCW 28A.210.080](#) or requirements for health plans under [RCW 28A.210.320](#). (Note: Students who qualify under McKinney-Vento are exempt from the requirements of these laws.)

Health Care Access: While undocumented children qualify for Apple Health for Kids insurance coverage, families may be fearful of applying for the coverage, because all applicants for Apple Health must provide their citizenship status.<sup>24</sup> Apple Health uses this information to determine what programs an applicant is eligible for.

Schools should work with families to identify barriers in accessing care and meeting the requirements of [Chapter 28A.210 RCW](#). School nurses can offer support for families to connect with health care organizations that provide health care regardless of immigration status.

In-school vaccination clinics, in collaboration with county public health departments or other partners that do not require insurance information, may be a valuable tool for assisting families to access required vaccines.<sup>25</sup>

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<sup>24</sup> See [WA Health Care Authority – Apple Health: Citizenship and Immigratio status general requirements](#).

<sup>25</sup> See WA Dept. of Health website for information on [local health jurisdictions](#) and on [Care-a-Van mobile health services](#).

## Special Education Services

United States citizenship is not a condition of eligibility for a student to receive special education services. School districts must conduct child find activities calculated to reach all students with a suspected disability, regardless citizenship or immigration status, for the purpose of locating, evaluating, and identifying students who are potentially in need of special education and related services.<sup>26</sup> This responsibility extends to all students residing within the school district's boundaries whether or not they are enrolled in the public school system.

As with any family where a parent's/guardian's first language is not English, those parent(s)/guardian(s) must be notified in their preferred language (or other preferred mode of communication) if their student has been referred for special education services because of a suspected disability.<sup>27</sup> When seeking consent for evaluation or the provision of services, school districts must fully inform parents/guardians of all information relevant to the activity for which consent is sought, in the parents'/guardians' native language, or through another mode of communication.<sup>28</sup> School districts must also provide parent(s)/guardian(s) with a copy of the [Notice of Special Education Procedural Safeguards](#) in their preferred language or other preferred mode of communication.<sup>29</sup>

## Language Access

Under state and federal nondiscrimination laws, school districts must ensure meaningful communication with parent(s)/guardian(s) in a language they understand and provide adequate notification to limited-English proficient (LEP) parent(s)/guardian(s) about programs, services, or activities available to non-LEP parent(s)/guardian(s).<sup>30</sup>

As of 2022, Washington school districts are required to:

- Designate a language access liaison to facilitate district compliance with state and federal laws related to family engagement;
- Adopt a language access policy and procedures that adheres to the principles of an effective language access program for culturally responsive, systemic family engagement; and
- Implement a language access program for culturally responsive, systemic family engagement. Implementation of a language access program requires that a school district, at a minimum, complete the activities outlined in RCW 28A.183.040(3).<sup>31</sup>

Schools must determine a family's preferred language for communication during enrollment and provide interpreters or translated documents at no cost to the family. Identification of a

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<sup>26</sup> [WAC 392-172A-02040](#); [RCW 49.60.030 & 215](#)

<sup>27</sup> [34 CFR §300.503](#); [WAC 392-172A-05010](#)

<sup>28</sup> [34 CFR §300.9](#); [WAC 392-172A-01040](#).

<sup>29</sup> [20 USC § 1415\(d\)\(2\)](#); [34 CFR §300.504](#); [WAC 392-172A-05015](#).

<sup>30</sup> [RCW 28A.642.010](#) and Title VI of the Civil Rights Act of 1964.

<sup>31</sup> [RCW 28A.183.040](#).

parent(s)/guardian(s) as requiring language access assistance must not be interpreted to suggest immigration status.<sup>32</sup> These language services are essential to ensure all families can access educational services, make informed decisions, and participate fully in their child's education.

## Compulsory Attendance and Truancy Considerations

Attendance is an important aspect in Washington's students' learning and their access to supports offered through the school community. State law requires students to enroll and attend public or private school or engage in full-time home-based instruction when a student is 8 years of age and under 18.<sup>33</sup> School districts are required to contact families, provide interventions and supports, and follow the truancy process when an enrolled student is not attending public school.<sup>34</sup>

However, it is important to remember that undocumented students/families have unique circumstances that may cause worry or fear of coming to school. This may impact students' attendance. For example, if a student is absent due to worry or fear related to their immigration status, these absences must be excused as they fall under the excused absence category of safety concerns.<sup>35</sup>

Schools should be flexible about their timeline for excusing absences. If families indicate that the absences were related to fear or circumstances related to their immigration status, OSPI recommends these absences be excused, even if retroactively or after the school's timeline for excusing absences has passed. While a student's immigration status is not explicitly listed under the reasons for excused absences in [WAC 392-401-020\(1\)](#), absences due to student safety concerns is.

If a school is unable to contact or communicate with the student's family, consider if there are other school or district staff who might be well suited to connect with the family based on a shared relevant life experience, or an established trusting relationship with the family and student, to make a home visit. The purpose of the home visit is to establish the student and family's safety, bring resources and access to supports, and build a bridge between the family and school.

## Communication with Families

### *Key Principles*

- Create a welcoming, trust-based environment
- Ensure clear, accessible communication
- Protect student and family privacy

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<sup>32</sup> U.S. Dept. of Education [Dear Colleague Letter \(January 7, 2015\)](#).

<sup>33</sup> [RCW 28A.225.010](#).

<sup>34</sup> See OSPI: [Elementary Required Steps](#) and [Secondary Required Steps](#).

<sup>35</sup> [WAC 392-401-020\(j\)](#)

- Demonstrate cultural sensitivity

### *Recommended Strategies*

1. Language Access
  - Use clear, simple language in all communications
  - Provide translated materials in families' preferred language
  - Offer professional interpretation services
  - Verify translations with community language experts
2. Building Trust
  - Explicitly communicate school policies protecting student privacy
  - Reassure families about:
    - Free access to educational services
    - No requirement to disclose immigration status
    - The school's commitment to student safety
3. Communication Channels
  - Offer multiple communication methods, such as: in-person meetings, phone calls, text messages, emails, or community liaison support
  - Consider partnering with local community groups to coordinate information sharing
4. Outreach Considerations
  - Create welcoming school environments
  - Host community information sessions
  - Develop materials that address common family concerns
  - Provide resources about student rights and available support services

## ADDITIONAL RESOURCES

- [Washington State Attorney General's Office Guidance: Keep Washington Working Act: Guidance, Model Policies, and Best Practices for Public Schools](#)
- [OSPI webpage: Immigrant Students' Rights to Attend Public Schools](#)
- [U.S. Office of Civil Rights Dear Colleague Letter: School Enrollment Procedures](#)
- [Federal Fact Sheet: Information on the Rights of All Children to Enroll in School](#)
- [RCW 43.17.425](#) Immigration and citizenship status—State agency restrictions
- [RCW 10.93.160](#) Immigration and citizenship status—Law enforcement agency restrictions
- [OSPI's Multilingual Learner Policies & Practices Guide](#) (pages 12–15)
- [OSPI's Home Language Survey Guidance](#)
- [Washington Immigrant Solidarity Network \(WAISN\)](#)
- [WAISN Resource Finder](#) (Wraparound Services by County)
- [Northwest Immigrant Rights Project \(NWIRP\)](#)
- [Empowering Students & Families with Varying Immigration Statuses: Resource Sheet](#)
- [Empowering Students & Families with Varying Immigration Statuses: Webinar](#)