

IMMIGRATION & STUDENTS



RIGHT TO AN EDUCATION

Do I have the right to a K-12 education as an undocumented student?

YES. Every child who lives in California has the right to a free public education regardless of the child or his/her family's race, nationality, sex, religion, whether they speak English or not, and immigration status. Every child in California, including non-citizens and undocumented students, has a right to attend a public school in the district where his or her parent, guardian, or sponsor reside¹ or a charter school.

Do I have the right to an education at a charter school as an undocumented student?

YES. Charter schools may not deny you admission on the basis of your undocumented status. You can learn more about your rights to in charter school admissions here: www.aclusocal.org/unequal-access/.

IMMIGRATION ENFORCEMENT ACTIONS ON SCHOOL CAMPUS

Will the U.S. government conduct immigration enforcement actions on my school campus?

USUALLY NO. The United States government has guidance that generally limits immigration enforcement actions on or directed towards school campuses. The types of schools covered by this policy include primary, secondary, and post-secondary schools such as colleges and universities as well as licensed daycare centers, pre-schools, school bus stops, and any school-related activity or event. Students, parents, and school staff should remain vigilant.

What do you mean by an “immigration enforcement action”?

Federal immigration enforcement actions are actions taken by U.S. Immigration Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or Homeland Security Investigations (HSI) officers. Examples of such actions include searches, interviews, surveillance for immigration purposes, and arrests.

What is a “safe haven” or “safe zone” school district?

Some school districts in California have declared that they are “safe zone” or “safe haven” school districts. This means that the district promises to resist efforts of immigration authorities to come on campus or use school records for immigration enforcement purposes.

Should I be worried if my school has not declared itself a “safe haven” or “safe zone” district?

NO. Even if your school district or charter did not adopt a “safe haven” or “safe zone” resolution, your district or charter was required to adopt policies limiting your school's ability to cooperate in

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immigration enforcement actions by July 1, 2018. The policies should also declare that your school remains safe and accessible to all Californians, regardless of immigration status.ⁱⁱ To learn about your district's policies on this topic, search for your district's school board policies on the school district's website with search terms like:

- response to immigration enforcement,
- nondiscrimination,
- student records,
- district residency,
- visitors/outsideers,
- Uniform Complaint Procedures, or
- bullying.

If your school has not yet adopted these types of policies, then you should encourage your school district to do so by letting them know they are legally required to. The ACLU of California has a model school board policy that we think all school districts should adopt, available online at https://www.aclunc.org/docs/July_2017_FINAL_ACLU_Model_Sanctuary_School_Board_Policy.pdf.

Also, the California Attorney General published a guide to help school districts comply with California laws called *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*, available online at <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>.

SCHOOL REQUESTS FOR STUDENT DOCUMENTS

Can my school district ask about my citizenship or immigration status for proof that I live in the school district?

NO. School districts may NOT ask about a student's citizenship or immigration status as proof of a student's residency within a district.ⁱⁱⁱ Schools may ask for phone bills, lease agreements, affidavits, or other documents to prove residency instead.^{iv}

Do I have the right to withhold information on my citizenship or immigration status from my school district?

YES. You have the right to withhold information on your citizenship or immigration status from your school. Your school may NOT stop you from enrolling if you do not provide that information.

Can my school district request my birth certificate as proof of my age?

YES, but your school district may NOT stop you from enrolling in school because you lack a birth certificate or have a foreign place of birth.

Do I have the right to refuse to provide my social security number to my school district?

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YES. Your school district may not ask for your Social Security Number, or the last 4 digits of your Social Security Number.^v This means that your school may NOT stop you from enrolling because you do not provide a Social Security Number.

Does my parent have the right to refuse providing his or her social security number to my school?

YES. Your school district may not ask for your parent's or guardian's Social Security Number.^{vi} Your parent or guardian can refuse to provide his or her social security number if asked by a school. Your school cannot stop you from enrolling because your parent or guardian refuses to provide their social security number.

PRIVACY OF STUDENT RECORDS

Could immigration enforcement authorities get my student records from my school?

MAYBE. It may be possible for immigration enforcement authorities to access your student records, including identifying information such as your address, place of birth, and immigration status if you have provided it to your school.

Can other federal agencies ask my school to turn over my student records without my permission?

IT DEPENDS. The United States Department of Justice and Department of Education could ask your school to share your student records without your permission, but they may NOT ask for just any reason. For example, these two agencies may request records to audit or evaluate whether your school is complying with federal or state requirements for education programs.

If these agencies receive such information, there are rules that make it difficult for them to re-share the information with others such as immigration enforcement authorities.

You should encourage your school to adopt a policy promising not to share any information on your undocumented status with federal agencies unless required to do so by a court order. Look here for a model policy:

https://www.aclunc.org/docs/July_2017_FINAL_ACLU_Model_Sanctuary_School_Board_Policy.pdf or here for model policies published by the California Attorney General: <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>.

What happens if a court issues a subpoena to my school for my student records?

Your school must comply with an order it receives from a judge to turn over student records and, in most cases, the school must notify you if this happens. It is important to be cautious about what information you share with the school.

Do I have the right to control who sees the student records held by my school?

GENERALLY YES, but there are exceptions. A federal law called the Family Educational Rights and Privacy Act (also known as "FERPA") requires that your school ask for your permission

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before it discloses information in your student record. But there are times when your school can share your student records without your permission, as described more below.

Could my school give my personal information, including my undocumented status, to the federal government without my permission?

YES. Although FERPA and state law protects the privacy of your student records generally, there are circumstances when your school must share such information without your permission to the federal government. For example, your school must share your records without your permission if a court issues a subpoena or court order.

Can my school share my place of birth with immigration enforcement authorities without my permission?

YES. FERPA allows your school to share some of your student information including your place of birth, email address, telephone number, and address without your permission. However, your school can refuse to share this information. You should ask your school district to promise not to share such information.

HIGHER EDUCATION

Can I apply for admission to institutions of higher education (community colleges, trade schools, colleges, or universities) as an undocumented student?

YES. All California public colleges and universities and many other private colleges and universities admit undocumented students. Check the requirements of institutions you want to attend to see if your undocumented status prohibits you from attending.

As an undocumented or non-citizen student, am I eligible for federal financial aid to attend college?

NO. Unfortunately, as an undocumented student you cannot receive federal financial aid. However, here in California a law called AB 540 allows you to apply for in-state tuition at California public colleges. Learn more about AB 540 here: http://ab540.com/What_Is_AB540_.html. Also, the California Dream Act of 2011 permits those who qualify for AB 540 to also qualify for some types of state financial aid, including UC scholarships and grants, Cal Grants, Chaffee Foster Youth Grants, and community college fee waivers.

I am an undocumented student who applied for in-state tuition through AB 540. Could immigration enforcement authorities learn of my undocumented status through my AB 540 application?

POSSIBLY, BUT IT IS UNLIKELY. The CSU, UC, and California community college systems publicly stated that they will refuse to share immigration-related information and do whatever they can to protect AB 540 applicant information from immigration enforcement authorities.

For additional resources, check out:

- University of California's Undocumented Student Resources: <http://undoc.universityofcalifornia.edu/index.html>

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- California Student Aid Commission: www.caldreamact.org
- MALDEF Scholarship Resource Guide: <https://www.maldef.org/resources/scholarship-resources/>
- US Department of Education, *Financial Aid and Undocumented Students*: <https://studentaid.ed.gov/sa/sites/default/files/financial-aid-and-undocumented-students.pdf>

PARENT/CAREGIVER PRIVACY

In my application for federal student aid through FAFSA, I revealed that my parents are undocumented by filling in “0s” for their social security number where asked in the FAFSA form. Could immigration enforcement authorities access this information from my FAFSA records?

YES. There is some risk involved in submitting a FAFSA form that reveals an undocumented parent because the U.S. Department of Education can share FAFSA application information with law enforcement agencies. Immigration enforcement authorities have never requested student FAFSA information in the past, but that could change in the future.

Each student should make the decision that is best for them in light of this risk and the important decision to attend college.

To volunteer at my school, my parent/caregiver has to submit their fingerprints for a background check through the Federal Bureau of Investigation (FBI). Once the FBI has my parent’s or caregiver’s information, could immigration enforcement authorities access their information from the background check?

YES. Federal immigration authorities may access information possessed by the FBI and use it to locate your parent/caregiver or initiate deportation proceedings against them. Be sure to protect yourself and your family. Non-citizen parents and caregivers are encouraged to consult with an attorney prior to submitting their fingerprints for FBI clearance.

PREPARING FOR THE POSSIBILITY OF A PARENT’S ARREST OR REMOVAL

Are there steps my family and I can take in case my undocumented parent or guardian is detained by immigration enforcement authorities?

Yes. You and your family can talk about what to do if a parent or caregiver is detained by immigration enforcement authorities in the future. To help you in this conversation, check out the Family Preparedness Plan by the Immigrant Legal Resource Center at <https://www.ilrc.org/family-preparedness-plan>. It is also important to update “emergency contact” information in your student file at school with information of a relative or friend who can be available to care for you.

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What else can I do to make sure that I am safe if my parent or guardian is detained by immigration enforcement authorities?

Your school is required to contact those listed in the emergency contact information your parent or caregiver provided to the school if your parent or guardian becomes unavailable to care for you. Your school should only call state protective services as a last resort. Your school should never contact immigration enforcement authorities.

ADDITIONAL RESOURCES

- National Immigration Law Center: <https://www.ilrc.org/immigrant-youth>
- Immigration Law Resource Center-Immigration Youth: <https://www.ilrc.org/immigrant-youth>
- ACLU Know Your Rights: Immigrants' Rights: <https://www.aclu.org/know-your-rights/what-do-if-questioned-about-your-immigration-status>



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ⁱ Students experiencing homelessness (including sometimes unaccompanied youth) and foster youth have additional rights to continue attending schools even if they move out of their school districts. To learn more, visit <https://www.myschoolmyrights.com/homeless-youth/> or <https://www.myschoolmyrights.com/foster-youth/>.

ⁱⁱ California Education Code section 234.7.

ⁱⁱⁱ California Education Code section 234.7.

^{iv} California Education Code section 48204.1.

^v California Education Code section 49076.7.

^{vi} California Education Code section 49076.7.