



Education for all

Enrolling homeless and other undocumented pupils

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Every fall, school districts across the state enroll new students. As part of the enrollment process, new students and their parents are asked to provide a number of documents, including birth certificates, records from any school the student most recently attended, immunization records and proof of residency. Frequently, students show up with varying degrees of the information needed. Sometimes this is due to parents not bringing in the required documents or having incomplete records. Other times, it's because the records do not exist.

In the latter case, school districts are left wondering what to do with a student who arrives ready to be admitted, but lacks the required paperwork. Let's look at homeless and other undocumented students and strategies for enrolling them.

Undocumented students

First, let's start with the basic premise that all children in the U.S. are entitled to a basic public education regardless of their race, color, national origin, citizenship, immigration status or the status of their parents. In 1982, the United States Supreme Court held in *Plyler v. Doe* that 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 (457 U.S. 202 (1982)). This means that school districts that either prohibit or discourage children from enrolling in schools because they or their parents are not U.S. citizens, or are undocumented, may be in violation of federal law. This ruling does not apply to exchange and visitor students

who, unlike immigrant children, must meet certain obligations to attend school in the U.S. These obligations include holding an appropriate visa and sometimes paying tuition to the district.

Districts will frequently ask whether, after enrolling the student, they have a duty to report the undocumented student and his/her family to immigration authorities. A federal district court addressed this issue

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in 1995 and held that reporting undocumented students could conflict with the *Plyler* mandate that all undocumented children have access to education. If school authorities report an undocumented student to immigration authorities and the student is then removed from school as a result, the school district's actions could be viewed as having denied that student access to school.

In addition, there is no statutory obligation in Ohio law to make such a report. The Family Educational Rights and Privacy Act (FERPA) also protects the confidentiality of education records

of students, and the voluntary release of such information by a school district could violate FERPA. As a result, districts should be wary of voluntarily reporting undocumented students to immigration authorities.

Homeless students

In 1987, Congress enacted the McKinney-Vento Homeless Assistance Act, which was designed to require school districts to provide homeless children the same educational opportunities available to other children. The McKinney-Vento Act defines "homeless children" as individuals who lack a fixed, regular and adequate nighttime residence. It includes children who are sharing the housing of others due to loss of housing (often referred to as "doubling-up"); children living in motels, hotels, trailer parks or camping groups due to lack of alternative accommodations; children living in emergency or transitional shelters; children abandoned in hospitals; and children awaiting foster care placement. It also includes children whose primary nighttime residence is a public or private place not ordinarily used as a sleeping accommodation for human beings, such as cars, parks, public spaces, abandoned buildings and other such places.

Under state law, homeless students are permitted to attend either their "school of origin" (the district they attended upon becoming homeless) or their "school of residence" (the district where they have temporary shelter). Students have the right to remain in the school of origin for the duration of their homelessness. In addition, if the student moves into permanent housing

during the school year the student can finish that academic year in the school of origin. Homeless students may not be denied enrollment because they lack previous academic records, proof of residency or other documents that schools typically obtain from new students.

Practical implications

To comply with these laws, districts must ensure that students are not barred from enrolling in public schools on the basis of their own citizenship status or because they are homeless. Moreover, districts may not request information with the purpose or result of denying access to public schools. To help you meet these obligations, I have provided some examples of several 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.

- Proof of residency — Most school districts require individuals to provide proof that they live within the boundaries of the school district. Copies of phone and water bills, lease agreements or other documents are frequently requested for this purpose. A school district should not ask about a student’s citizenship or immigration status to establish residency within the district. Homeless students may move frequently and live in places lacking traditional addresses, which can make verifying residency difficult. A district could consider developing affidavits of residence or other forms to replace typical proof of residency for homeless students. These forms should be carefully crafted with input from your board counsel to ensure they do not create further barriers or delay enrollment.
- Birth certificate — A school district may require a birth certificate or similar certification of birth (see below) to ensure 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. If a student does not have a birth certificate, the district may request a passport or attested transcript of a passport showing the date and place of birth of the child; an attested transcript of the certificate of birth; an

attested transcript of baptism showing the date and place of the birth of the child; an attested transcript of a hospital record showing the date and place of the birth of the child; or a birth affidavit.

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- Social Security Number (SSN) — A district may not deny enrollment to a student if he or she chooses not to provide a Social Security Number. If the district chooses to request a SSN, 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.



Although a district may request enrollment information, certain information may not be used to deny access to public schools.

Frequent moves, lack of personal space and many other factors can make it difficult for homeless families to maintain the documentation schools require for enrollment. If the family has lost or misplaced their cards, the district's

homeless liaison could help the family obtain cards or new copies from the Social Security Administration.

- 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 individuals provide a student's race or ethnicity for this purpose. However, the district may not bar the student's attendance if an individual chooses not to provide his or her child's race or ethnicity.
- Educational/immunization records — If the records are not in English, a translation will be required to determine the student's academic level or school credits. If a translation is unavailable, consider asking the parent to have a private service, community organization or a member of the country's embassy provide a verbatim translation on official stationery. If student records cannot be obtained or records are not available, the district should consider adopting a procedure for immediate screening, which may include an academic diagnostic test to help determine the student's skill level and appropriate placement. The National Center for Homeless

Education has additional best practices for enrolling students without the appropriate records. These best practices are available online at: <http://links.ohioschoolboards.org/18392>.

A homeless student may not be barred from enrollment due to lack of immunization until an effort has been made to obtain records. If records cannot be obtained, the district should provide assistance in getting the student properly immunized. In the meantime, the child must be admitted to school. The district's homeless liaison should work with the families and students following enrollment to gather the necessary enrollment documentation.

Districts should handle enrollment issues on a case-by-case basis. If you have questions about a specific scenario, please call your board counsel. For general information about attendance and tuition, contact the OSBA Legal Services Division at (800) 589-OSBA. ■

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