



Michigan Immigrant Rights Center Issue Brief: A Child's Right to Education in Michigan

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Right to Attend a Free Public School

- All children, regardless of immigration status, can attend a free public school.
- Under *Plyler v. Doe*, the United States Supreme Court overturned a Texas statute that denied enrollment in the public schools to children not “legally admitted” in the country. The Supreme Court said that denial of education violates our political and cultural history, but also the Equal Protection clause of the U.S. Constitution. Justice Brennan stated:

Education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests. Plyler v. Doe, 457 U.S. 202, 221 (1982).

- The holding in *Plyler v. Doe* means that public schools may not:
 - Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status
 - Treat a student differently to verify residency
 - Engage in any practices that “chill” or hinder the right of access to school
 - Make inquiries of students or parents that may expose their undocumented status
- Educators are not allowed to release a student’s educational records without the parent’s consent under the *Family Educational Rights and Privacy Act (FERPA)*. Under FERPA, educators are NOT allowed to “expose” children and their families to immigration enforcement authorities. FERPA mandates that no funds shall be made available to any educational agencies or institutions that release a student’s “personally identifiable information” without the written consent of the student’s parents or guardians. The federal regulations defines “personally identifiable information” as including, but not limited to, the student’s name, the

names of the student's parents, and most importantly, a social security number or other personal identifier of the student. *20 U.S.C. §1232g(b)(1) (2000); 34 C.F.R. §99.3.*

Right to Enroll in School

- Social security numbers are not required for enrollment. The Privacy Act of 1974 prevents public schools from denying an education to any student because of the student's failure to disclose his social security number. While a school may ask for a number, it must explain at the same time that it does not require the number and that it will assign a unique identifier to any student who does not have a social security number. *Privacy Act of 1974, Pub. L. 93-579, §7, 88 Stat. 1909.*
- Birth Certificates cannot be required for enrollment. The Michigan Revised School Code provides that a person enrolling in school can have either (1) a certified copy of the birth certificate; OR (2) other reliable proof of the student's identity and age AND an affidavit explaining the inability to produce a copy of the birth certificate. *MCL 380.1135(1).*
- The Revised School Code is flexible as to what constitutes other reliable proof that could serve as an alternative to a birth certificate. However, United States Citizenship and Immigration Services (USCIS) often requires birth certificates for immigration petitions and what they accept in the alternative is instructive. If a birth certificate is not available, USCIS accepts:
 - Church Record (Baptismal document – showing date, place of child's birth, names of child's parents)
 - School Record (Information showing date of admission, child's date of birth or age at the time, the place of birth, the names of the parents)
 - Census Record (State or federal census record showing the names, place of birth, date of birth, or the age of the person listed)
 - Affidavits (Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the child's birth)

See 8 C.F.R. §204.2(d)(2)(v); Form I-130 instructions.

- Immunizations may be required before a child can be permitted to enter or attend school. School districts may require that parents or guardians present documentation at the time of registration or not later than the first day of school that (1) their child has received all required doses of vaccines OR (2) that their child has received at least one dose of each of the required vaccines and is waiting to receive the subsequent doses. Vaccinations may be waived if there is a valid medical complication or the parents have opposing religious convictions. *MCL §§§ 333.9208; 333.9215; 380.1177.*
- The key issue with respect to immunizations is that children should not be treated differently because of their national origin, English proficiency, or migrant status. All children should be treated equally under the school district's policy. School districts may not require additional or different immunizations for immigrant or migrant children.

Right to Participate in School Programs

- The Free and Reduced School Lunch or Breakfast programs are available to low-income children regardless of their immigration status or their parent's immigration status. While the application for the free and reduced meal programs has a blank for a parent or guardian's social security number, parents who have not been issued a social security number may state "none." 7 C.F.R. §§ 245.3(b)(2); 245.6(a).
- Where an inability to speak and understand the English language excludes national origin minority students from effective participation in the educational programs of a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instruction program to students. In other words, a school could be committing national origin discrimination under Title VI if it fails to provide some form of language assistance to limited English proficient students who are otherwise precluded from participating meaningfully in school. *Lau v. Nichols*, 414 U.S. 563, 568 (1974).
- Migrant students with special education needs are entitled to receive free appropriate education. Under the Individuals with Disabilities Act (IDEA), the law requires that children be fairly assessed in their native language, and classified according to the type of disability. The assessment and the placement must be carried out quickly and parents must be kept informed of their child's educational plan in a language the parent understands. 20 U.S.C. §1414 et seq. (2000); 34 C.F.R. §300.300 et seq.

Rights of Migrant Parents to Participate

- School districts have the responsibility to adequately notify parents of national origin minority group students of school activities that are called to the attention of the other parents. Notification must be sufficient so that parents can make well-informed decisions about the participation of their children in a district's programs and services. Districts may be required to provide notification in the parents' home language. *The Provision of Equal Educational Opportunity to Limited-English Proficient Students*, U.S. Department of Education Office of Civil Rights (August 2000)
- The state of Michigan and each school district that receives monies from the federal migrant education program for a regular school year program must have a migrant parent advisory committee to develop a comprehensive plan. *No Child Left Behind Act of 2002*, Pub. L. 107-110, §1306, 115 Stat. 1425 (2002).

*If you have any questions or know of any child that has been denied an education due to his or her national origin, immigration status, limited English proficiency, or frequent migration, please contact the Michigan Immigrant Rights Center at (269) 492-7196:
<http://mirc.mplp.org>*