

From *Plyler* to Sanctuary: Education Policies Promoting a Welcoming and Safe Environment for Immigrant Families

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At a time of great uncertainty in U.S. immigration policy, the longstanding principle of equal access to education continues to protect the rights of students from an immigrant background in the public K–12 school system. Although the protections offered by schools do not override law enforcement, it has long been recognized that protecting the right of all students to access public education means ensuring that families view schools as safe and welcoming places. Whereas federal immigration policy can distinguish between the lawfully and unlawfully present, schools are not permitted to make such distinctions.

Immigration policies affect a substantial share of students in the United States. The Migration Policy Institute (MPI) has estimated that approximately 7 percent of children under age 18 live with an unauthorized immigrant parent—with only about 19 percent of those children being unauthorized themselves. More broadly, about 18 million children under age 18 live with at least one immigrant parent, accounting for 26 percent of all U.S. children. Nearly 90 percent of those children were U.S. born.¹ These numbers suggest that while public attention is often focused on unauthorized immigrants, policies and politics around immigration also impact a significant share of U.S.-citizen children.

All students, regardless of their immigration status, have the right to free public education in U.S. elementary and secondary schools. This right was recognized by the Supreme Court in 1982 in the *Plyler v. Doe* ruling, which held that two school districts in Texas could not impose fees on unauthorized immigrant families, as this violated the equal protection clause of the 14th Amendment.² Attempts to prevent or discourage unauthorized immigrant student enrollment—both outright and indirect—have surfaced in the years since, most recently following the arrival of unusually large numbers of Central American unaccompanied youth released to communities throughout the country pending immigration hearings. Families trying to enroll their children in school reported being turned away due to a lack of required documents to prove the student's age, relationship to the guardian, or residence within the district. In other cases, school staff improperly referred older immigrant students—including some with legal status—to alternative or adult

¹ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," *Migration Information Source*, February 8, 2018, www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states.

² Michael A. Olivas, "Plyler v. Doe, the Education of Undocumented Children, and the Polity," in *Immigration Stories*, eds. David Martin and Peter Schuck (New York: Foundation Press, 2005), www.law.uh.edu/iheg/maundocumented/PlylervDoe_IMMSTORIES_FoundationPress2005.pdf.

education programs that did not provide equivalent services to those offered in comprehensive high schools.³

In response to complaints from across the country about discriminatory enrollment practices, the U.S. Department of Justice and the Office of Civil Rights in the U.S. Department of Education issued guidance in 2014 underscoring the basic message of *Plyler* that schools and districts cannot deny children access to free, public K-12 education on the basis of their immigration or citizenship status or that of their parents or guardians.⁴ Additionally, the guidance states that districts may not “maintain policies that have the effect of prohibiting or discouraging... children from enrolling in schools” due to immigration status. Examples of such policies include asking about citizenship status or requiring state-issued identification (such as a driver’s license) to establish residency in the school district, requiring parents to provide a social security number for themselves or their children, or denying enrollment to a child for whom a birth certificate cannot be provided or who only has a birth certificate from a foreign country.⁵ Citing this federal guidance, states such as New York issued specific policy and procedural guidelines to district and school staff that work directly with families in the enrollment process.⁶

Responding to the changing political climate since the election of President Trump in 2016, a number of districts across the country declared themselves sanctuary districts or safe havens. The specifics of each declaration differed, but most included a policy that schools would not cooperate with immigration enforcement officers unless they had a warrant, subpoena, or court order; outlined processes for school staff to comply with law enforcement requests; and limited the kinds of information related to immigration status that schools and districts can collect. These declarations are aimed at reassuring families that they should continue to send their children to school regardless of their or their children’s immigration status.⁷

With immigrant communities increasingly fearful of immigration enforcement and the pending withdrawal of protection for some unauthorized youth under the Deferred Action for Childhood Arrivals program, advocates have noted that *Plyler* and sanctuary district declarations are two significant policy tools that schools and districts can leverage to ensure that unauthorized immigrant students and families can access the educational services to which they are legally entitled.

³ Zenande Booi, et al., *Ensuring Every Undocumented Student Succeeds: A Report on Access to Public Education for Undocumented Children* (Washington, DC: Georgetown Law Human Rights Institute and Women’s Refugee Commission, 2016), www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/events/upload/2015-16-HRI-Fact-Finding-Report.PDF; Garance Burke and Adrian Sainz, “Migrant Children Kept from Enrolling in School,” Associated Press, May 2, 2016, <https://apnews.com/b7f933ef6e054c2ca8e32bd9b477e9ab/ap-exclusive-migrant-children-kept-enrolling-school>.

⁴ Catherine E. Lhamon, Philip H. Rosenfelt, and Jocelyn Samuels, “Dear Colleague Letter: School Enrollment Procedures,” letter, U.S. Department of Justice and U.S. Department of Education, Washington, DC, May 8, 2014, www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf.

⁵ U.S. Department of Justice and U.S. Department of Education, “Information on the Right of All Children to Enroll in School” (fact sheet, U.S. Department of Justice and U.S. Department of Education, Washington, DC, 2014), www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf.

⁶ Cosimo Tangorra Jr. and Angelica Infante Green, “Enrolling and Serving Recently Arrived Unaccompanied Children” (slides, New York State Education Department, Engage NY, Albany, NY, September 10, 2014), www.p12.nysed.gov/sss/pps/residency/nysed-unaccompanied-children-presentation.pdf.

⁷ Carolyn Jones, “What it Means When a School District Declares Itself a ‘Safe Haven’ or ‘Sanctuary’: A Quick Guide,” EdSource, August 10, 2017, <https://edsources.org/2017/what-it-means-when-a-school-district-declares-itself-a-safe-haven-or-sanctuary-a-quick-guide/584273>.