

# IMMIGRATION

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## What does the law say?

You can't discriminate on the basis of race or immigration status. The U.S. Supreme Court has held that it is unconstitutional to deny immigrant students education based on their undocumented status. *Plyler v. Doe*, 457 U.S. 202 (1982). Oregon law prohibits discrimination in education based on race and national origin. ORS 659.850(1). Students should be educated regardless of immigration or legal documentation status.

Oregon law also provides that "a public body may not inquire about or request information concerning a person's citizenship or immigration status" except as necessary for benefit eligibility. HB 3464 (2017).

## Can we require documentation to prove district residency?

Yes, but you should not limit this to documents that only citizens would have (social security cards). Other options may include utility bills, insurance statements, rental agreements, mortgage documents, pay stubs, etc. You also want to be careful in requiring documentation of students who meet the definition "homeless" under the McKinney-Vento Act. See 42 U.S.C. 11434a.

## What information should we disclose if requested?

Under FERPA, you are allowed, but not required, to disclose directory information of students. You can review your policy JOA and yearly notice to see what your district designates as directory information. Other education records that are not directory information (or if a student opts out of directory information) generally require parental permission, subpoena or other legal order for disclosure (see Policy JOB).

Oregon law also prohibits disclosure of the following information of any individual (staff or student) for enforcement of federal immigration laws:

- Address;
- Workplace or work hours;
- School or school hours;
- Contact information (phone, email, social media);
- Identity of relatives or associates;
- Information regarding hearings, proceedings or appointments that are not matters of public record; and
- Similar information for relatives or associates. HB 3464 (2017).

## What is the difference between a sanctuary and sensitive location?

"Sanctuary" does not have one established definition in the context of immigration enforcement. Consequently, it means different things to different organizations and people. Generally, a sanctuary school or district is one that provides some level of protection to immigrants. Districts need be careful when using this term to avoid conflict with state and federal law and confusion about district actions.

"Sensitive location" is defined by federal policy to include schools, medical facilities, places of worships, ceremonies or observances (weddings and funerals) and public demonstrations. This policy remains in effect

and limits enforcement actions at these locations. There are exceptions that allow for enforcement actions at sensitive locations and the policy could be withdrawn.

### **What should we do if an ICE official shows up at the school?**

If they are requesting records, take their contact information and let them know that you will get back to them. Next, consult legal counsel. Even if they have a subpoena, you generally do not need to provide records immediately.

If they are seeking to speak with a student, review your policies on working with law enforcement agencies (see policy KN). Generally, we recommend that you contact the parents and contact legal counsel if you have additional questions.

### **What should we do as districts to be prepared?**

- Review and update policies as needed;
- Train staff on their duties;
- Communicate to students and parents what your procedures are;
- Continue to provide a safe learning environment for all students; and
- Make resources available for those impacted by immigration policies and enforcement.

### **Resources**

U.S. Departments of Education and Justice, *Dear Colleague Letter*, May 8, 2014, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>

National School Boards Association, *Lifting the Lamp Beside the Schoolhouse Door, A Legal Guide to Serving Undocumented Students in Public Schools*, October 2017, [https://cdn-files.nsba.org/s3fs-public/reports/10711-4917 NSBA Immigration Guide Web FINAL.pdf?9z5lOX54LS\\_gdm\\_9tG1wxPbWMgSecrpn](https://cdn-files.nsba.org/s3fs-public/reports/10711-4917%20NSBA%20Immigration%20Guide%20Web%20FINAL.pdf?9z5lOX54LS_gdm_9tG1wxPbWMgSecrpn)

Oregon State Board of Education, *Resolution on Safe & Welcoming Schools for All Students Regardless of National Origin, Immigration Status, or Documentation Status*, [http://www.oregon.gov/ode/about-us/stateboard/Documents/Safe%20Welcoming%20Schools%20Resolution%20\(English\).pdf](http://www.oregon.gov/ode/about-us/stateboard/Documents/Safe%20Welcoming%20Schools%20Resolution%20(English).pdf)

Oregon School Boards Association, *Immigration FAQ*, <http://www.osba.org/-/media/Files/Event-Materials/SBC/2017/Materials/Immigration-FAQ.pdf?la=en>

*Plyler v. Doe*, 457 U.S. 202 (1982), <https://www.law.cornell.edu/supremecourt/text/457/202>

ORS 659.850, [https://www.oregonlegislature.gov/bills\\_laws/ors/ors659.html](https://www.oregonlegislature.gov/bills_laws/ors/ors659.html)

Oregon HB 3464 (2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB3464/Enrolled>

### **District Policies**

- AC, Nondiscrimination
- JOA, Directory Information
- JOB, Personally Identifiable Information
- KN, Relations with Law Enforcement Agencies

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