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THE RIGHTS OF IMMIGRANT STUDENTS AND ENGLISH LEARNERS IN THE TEXAS PUBLIC SCHOOLS

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- II. Right to attend free public school: Plyler v. Doe
- III. Social Security Numbers: Privacy Act of 1974
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SCHOOL OPENING ALERT

The U.S. Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202 (1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

As a result of the *Plyler* ruling, 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 disparately to determine residency.
- ◆ Engage in any practices to "chill" the right of access to school.
- ◆ Require students or parents to disclose or document their immigration status.
- ◆ Make inquiries of students or parents that may expose their undocumented status.
- ◆ Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

LLAMADA URGENTE

En 1982, El Tribunal Supremo de los Estados Unidos decidió en el caso titulado *Plyler v. Doe* [457 U.S. 202] que los niños y los jóvenes indocumentados tienen el mismo derecho a las escuelas públicas de primaria y secundaria que el que tienen sus contrapartes de nacionalidad estadounidense. Al igual que los demás niños, los estudiantes indocumentados están obligados a asistir a la escuela hasta que lleguen a la edad escolar requerida por la ley.

Bajo la decisión *Plyler*, las escuelas públicas no pueden:

- ◆ negarles admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentados, ya sea al momento de la matrícula o en cualquier otro momento.
- ◆ tratar a un estudiante en forma desigual o discriminatoria para determinar su situación legal y/o de residencia.
- ◆ tomar medidas o reglamentos que pudieran atemorizar a la comunidad indocumentada, con el resultado de que ellos no acudan a su derecho de acceso a las escuelas públicas.
- ◆ requerir que un estudiante o sus padres revelen o documenten su situación legal y/o inmigratoria.
- ◆ investigar la situación legal y/o inmigratoria de un estudiante o de sus padres, aún cuando sólo sea por razones educativas, ya que esto puede poner en evidencia dicha situación.
- ◆ exigir que un estudiante obtenga un número de seguro social como pre-requisito de matrícula a un programa escolar.

La escuela debe de asignar un número de identificación a los estudiantes que no tienen tarjeta de seguro social. Los adultos sin tarjeta de seguro social aplicando para el programa de almuerzo y/o desayuno gratis para sus hijos sólo necesitan indicar en la solicitud que no tiene un número de seguro social.



EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE E. STUDENTS AND PARENTS
CHAPTER 25. ADMISSION, TRANSFER, AND ATTENDANCE
SUBCHAPTER A. ADMISSION AND ENROLLMENT

§25.001 – Admission

(a) A person who, on the first day of September of any school year, is at least five years of age and under 21 years of age, or is at least 21 years of age and under 26 years of age and is admitted by a school district to complete the requirements for a high school diploma is entitled to the benefits of the available school fund for that year. Any other person enrolled in a prekindergarten class under Section 29.153 or Subchapter E-1, Chapter 29, is entitled to the benefits of the available school fund.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:

- (1) the person and either parent of the person reside in the school district;
- (2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;
- (3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;
- (4) the person has established a separate residence under Subsection (d);
- (5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;
- (6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);
- (7) the person resides at a residential facility located in the district;

(8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed; or

(9) the person does not reside in the school district but the grandparent of the person: (A) resides in the school district; and (B) provides a substantial amount of after-school care for the person as determined by the board.

(b-1) A person who is 21 years of age or older and is admitted by a school district for the purpose stated in Subsection (b) is not eligible for placement in a disciplinary alternative education program or a juvenile justice alternative education program if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in conduct that would otherwise require such placement, the district shall revoke admission of the student into the public schools of the district.

(b-2) A person who is 21 years of age or older who is admitted by a school district to complete the requirements for a high school diploma and who has not attended school in the three preceding school years may not be placed with a student who is 18 years of age or younger in a classroom setting, a cafeteria, or another district-sanctioned school activity. Nothing in this subsection prevents a student described by this subsection from attending a school-sponsored event that is open to the public as a member of the public.

(c) The board of trustees of a school district or the board's designee may require evidence that a person is eligible to attend the public schools of the district at the time the board or its designee considers an application for admission of the person. The board of trustees or its designee shall establish minimum proof of residency acceptable to the district. The board of trustees or its designee may make reasonable inquiries to verify a person's eligibility for admission.

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in: (A) removal to a disciplinary alternative education program; or (B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

(e) A school district may request that the commissioner waive the requirement that the district admit a foreign exchange student who meets the conditions of Subsection (b)(6). The commissioner shall respond to a district's request not later than the 60th day after the date of receipt of the request. The commissioner

shall grant the request and issue a waiver effective for a period not to exceed three years if the commissioner determines that admission of a foreign exchange student would:

(1) create a financial or staffing hardship for the district; (2) diminish the district's ability to provide high quality educational services for the district's domestic students; or (3) require domestic students to compete with foreign exchange students for educational resources.

(f) A child placed in foster care by an agency of the state or by a political subdivision shall be permitted to attend the public schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. A durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district.

(g) A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of the Department of Family and Protective Services and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(g-1) If a student who is in the conservatorship of the department is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of the department, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the school district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(h) In addition to the penalty provided by Section 37.10, Penal Code, a person who knowingly falsifies information on a form required for enrollment of a student in a school district is liable to the district if the student is not eligible for enrollment in the district but is enrolled on the basis of the false information. The person is liable, for the period during which the ineligible student is enrolled, for the greater of:

(1) the maximum tuition fee the district may charge under Section 25.038; or

(2) the amount the district has budgeted for each student as maintenance and operating expenses.

(i) A school district may include on an enrollment form notice of the penalties provided by Section 37.10, Penal Code, and of the liability provided by Subsection (h) for falsifying information on the form.

(j) For the purposes of this subchapter, the board of trustees of a school district by policy may allow a person showing evidence of legal responsibility for a child other than an order of a court to substitute for a guardian or other person having lawful control of the child under an order of a court.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1019, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 2.08, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1055, § 2, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 164, § 2, eff. May 27, 2005; Acts 2005, 79th Leg., ch. 920, § 1, eff. June 18, 2005; Acts 2007, 80th Leg., ch. 850, § 1, eff. June 15, 2007; Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 4.002, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 688 (H.B. 2619), § 9, eff. Sept. 1, 2013; Acts 2015, 84th Leg., ch. 142 (H.B. 4), § 3, eff. May 28, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 1, eff. Sept. 1, 2015.

TEXAS EDUCATION CODE



SUBTITLE E. Student and Parents CHAPTER 25. Admission, Transfer and Attendance SUBCHAPTER A. Admission and Enrollment

§ 25.002. REQUIREMENTS FOR ENROLLMENT.

(a) If a parent or other person with legal control of a child under a court order enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:

- (1) the child's birth certificate or another document suitable as proof of the child's identity;
- (2) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state; and
- (3) a record showing that the child has the immunizations as required under Section

38.001, in the case of a child required under that section to be immunized, proof as required by that section showing that the child is not required to be immunized, or proof that the child is entitled to provisional admission under that section and under rules adopted under that section.

(a-1) Information a school district furnishes under Subsections (a)(1) and (2) must be furnished by the district not later than the 10th working day after the date a request for the information is received by the district. Information a parent or other person with legal control of a child under a court order furnishes under Subsections (a)(1) and (2) must be furnished by the parent or other person not later than the 30th day after the date a child is enrolled in a public school. If a parent or other person with legal control of a child under a court order requests that a district transfer a child's student records, the district to which the request is made shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.

(b) If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.

(c) If the information required by Subsection (a) is not furnished to the district within the period provided by that subsection, the district shall notify the police department of the municipality or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.

(d) When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense under Section 37.10, Penal Code, and that enrollment of the child under false documents subjects the person to liability for tuition or costs under Section 25.001(h).

(e) A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection (c). An offense under this subsection is a Class B misdemeanor.

(f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.

(g) A school district shall accept a child for enrollment in a public school without the documentation required by Subsection (a) if the Department of Protective and Regulatory Services has taken possession of the child under Chapter 262, Family Code. The Department of Protective and Regulatory Services shall ensure that the documentation required by Subsection (a) is furnished to the school district not later than the 30th day after the date the child is enrolled in the school.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 575, § 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1514, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 234, § 2, eff. Sept. 1, 2003.

Amended by: Acts 2005, 79th Leg., Ch. 164, § 3, eff. May 27, 2005.

THE TEXAS ADMINISTRATIVE CODE

TITLE 19. Education PART 2. Texas Education Agency



CHAPTER 129. Student Attendance SUBCHAPTER A. Student Attendance Allowed

Statutory Authority: The provisions of this Chapter 129 issued under the Texas Education Code, §42.004, unless otherwise noted.

§129.1. FREE ATTENDANCE IN GENERAL.

(a) Definitions. Identification is required within 30 days of a child's enrollment in a Texas school, in accordance with the Texas Education Code, §25.002. For the purposes of identification, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Documents that are suitable for identification - Shall be defined by the commissioner of education.

(2) The child's records - Include a minimum set of data and documentation established by the commissioner of education. The minimum set of data will include the child's social security number or a state-approved alternative identification number as assigned by the Public Education Information Management System (PEIMS).

(b) Children shall not be denied enrollment or be removed solely because they fail to meet the requirements of subsection (a) of this section.

(c) Students in this country under a bona fide exchange program are eligible to attend school in the designated district of residence.

Source: The provisions of this §129.1 adopted to be effective September 1, 1996, 21 TexReg 588.

TEXAS EDUCATION CODE



SUBTITLE E. Student and Parents CHAPTER 25. Admission, Transfer and Attendance SUBCHAPTER A. Admission and Enrollment

§ 25.085. COMPULSORY SCHOOL ATTENDANCE.

(a) A child who is required to attend school under this section shall attend school each school day for the entire period the program of instruction is provided.

(b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th birthday shall attend school.

(c) On enrollment in prekindergarten or kindergarten, a child shall attend school.

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:

- (1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;
- (2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);
- (3) an accelerated instruction program to which the student is assigned under Section 28.0211;
- (4) a basic skills program to which the student is assigned under Section 29.086; or
- (5) a summer program provided under Section 37.008(1) or Section 37.021.

(e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 19th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, except a school district may not revoke the enrollment of a person under this subsection on a day on which the person is physically present at school. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 65.003(a), Family Code, does not apply to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

(g) After the third unexcused absence of a person described by Subsection (e), a school district shall issue a warning letter to the person that states the person's enrollment may be revoked for the remainder of the school year if the person has more than five unexcused absences in a semester.

(h) As an alternative to revoking a person's enrollment under Subsection (e), a school district may impose a behavior improvement plan described by Section 25.0915(a-1)(1).

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1019, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, Sec. 2.10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 711, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 50 (H.B. 566), Sec. 1, eff. May 10, 2007.

Acts 2007, 80th Leg., R.S., Ch. 850 (H.B. 1137), Sec. 2, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 935 (H.B. 2398), Sec. 7, eff. September 1, 2015.

TEXAS EDUCATION CODE



SUBTITLE E. Student and Parents CHAPTER 25. Admission, Transfer and Attendance SUBCHAPTER A. Admission and Enrollment

§ 25.086. EXEMPTIONS.

- (a) A child is exempt from the requirements of compulsory school attendance if the child:
- (1) attends a private or parochial school that includes in its course a study of good citizenship;
 - (2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;
 - (3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate^[0] from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
 - (4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;
 - (5) is at least 17 years of age and:
 - (A) is attending a course of instruction to prepare for the high school equivalency examination, and:
 - (i) has the permission of the child's parent or guardian to attend the course;
 - (ii) is required by court order to attend the course;
 - (iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or
 - (iv) is homeless as defined by 42 U.S.C. Section 11302; or
 - (B) has received a high school diploma or high school equivalency certificate;
 - (6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:
 - (A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or
 - (B) the child is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);

- (7) is at least 16 years of age and is enrolled in a high school diploma program under Chapter 18;
- (8) is enrolled in the Texas Academy of Mathematics and Science under Subchapter G, Chapter 105;
- (9) is enrolled in the Texas Academy of Leadership in the Humanities;
- (10) is enrolled in the Texas Academy of Mathematics and Science at The University of Texas at Brownsville;
- (11) is enrolled in the Texas Academy of International Studies; or
- (12) is specifically exempted under another law.

(b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29, or of its responsibility to provide a free appropriate public education to a child with a disability.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, § 1, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1019, § 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1282, § 2, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 377, § 3, eff. June 17, 2005. Acts 2005, 79th Leg., Ch. 887, § 2, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1339, § 6, eff. June 18, 2005. Acts 2007, 80th Leg., R.S., Ch. 921, § 4.003, eff. September 1, 2007.

TEXAS EDUCATION CODE



SUBTITLE E. Student and Parents CHAPTER 25. Admission, Transfer and Attendance SUBCHAPTER A. Admission and Enrollment

Sec. 25.093. PARENT CONTRIBUTING TO NONATTENDANCE.

(a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 65.003(a), Family Code, the parent commits an offense.

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in:

(1) the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of 1.75 million or more;

(2) a justice court of any precinct in the county in which the parent resides or in which the school is located; or

(3) a municipal court of the municipality in which the parent resides or in which the school is located.

(c) An offense under Subsection (a) is a misdemeanor, punishable by fine only, in an amount not to exceed:

(1) \$100 for a first offense;

(2) \$200 for a second offense;

(3) \$300 for a third offense;

(4) \$400 for a fourth offense; or

(5) \$500 for a fifth or subsequent offense.

(c-1) Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

(d) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) the juvenile justice alternative education program that the child has been ordered to attend; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the justice court or the constitutional county court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(e) At the trial of any person charged with violating this section, the attendance records of the child may be presented in court by any authorized employee of the school district or open-enrollment charter school, as applicable.

(f) The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) occurs may order the defendant to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available.

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, "parent" includes a person standing in parental relation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 865, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1403, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1504, Sec. 24, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1514, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 137, Sec. 4, 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 283, Sec. 38, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 6.001, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 148 (H.B. 734), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 935 (H.B. 2398), Sec. 11, eff. September 1, 2015.

TEXAS EDUCATION CODE



CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

§ 26.001. PURPOSE.

- (a) Parents are partners with educators, administrators, and school district boards of trustees in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.
- (b) The rights listed in this chapter are not exclusive. This chapter does not limit a parent's rights under other law.
- (c) Unless otherwise provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights.
- (d) Each board of trustees shall provide for procedures to consider complaints that a parent's right has been denied.
- (e) Each board of trustees shall cooperate in the establishment of ongoing operations of at least one parent-teacher organization at each school in the district to promote parental involvement in school activities.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

§ 26.002. Definition

In this chapter, "parent" includes a person standing in parental relation. The term does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Title 2 of this code and all educational rights under Section 151.001(a)(10), Family Code, shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, § 10, eff. June 13, 2001; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 6.002, eff. Sept. 1, 2017.

TEXAS EDUCATION CODE



CHAPTER 38. HEALTH AND SAFETY SUBCHAPTER A. GENERAL PROVISIONS

§ 38.001. IMMUNIZATION; REQUIREMENTS; EXCEPTIONS.

(a) Each student shall be fully immunized against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis, except as provided by Subsection (c).

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 43, § 1

(b) Subject to Subsections (b-1) and (c), the executive commissioner of the Health and Human Services Commission may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 94, § 2

(b) Subject to Subsection (c), the Department of State Health Services may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 43, § 1

(b-1) Immunization against human papillomavirus is not required for a person's admission to any elementary or secondary school; however, by using existing resources, the Health and Human Services Commission shall provide educational material about the human papillomavirus vaccine that is unbiased, medically and scientifically accurate, and peer reviewed, available to parents or legal guardians at the appropriate time in the immunization schedule by the appropriate school. This subsection preempts any contrary executive order issued by the governor. This subsection expires January 11, 2011.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 94, § 2

(b-1) Each year, the Department of State Health Services shall prepare a list of the immunizations required under this section for admission to public schools and of any additional immunizations the department recommends for school-age children. The department shall prepare the list in English and Spanish and make the list available in a manner that permits a school district to easily post the list on the district's Internet website as required by Section 38.019.

(c) Immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the immunization required poses a significant risk to the health and well-being of the applicant or any member of the applicant's family or household; or

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief; or

(2) is a member of the armed forces of the United States and is on active duty.

(c-1) An affidavit submitted under Section (c)(1)(B) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted to the admitting official not later than the 90th day after the date the affidavit is notarized.

(d) The Department of State Health Services shall provide the required immunization to children in areas where no local provision exists to provide those services.

(e) A person may be provisionally admitted to an elementary or secondary school if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The Department of State Health Services shall adopt rules relating to the provisional admission of persons to an elementary or secondary school.

(f) A person who has not received the immunizations required by this section for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Amended by Acts 2003, 78th Leg., ch. 198, § 2.160, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 43, § 1, eff. May 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 94, § 2, eff. May 15, 2007.

TEXAS EDUCATION CODE



CHAPTER 38. HEALTH AND SAFETY SUBCHAPTER A. GENERAL PROVISIONS

§ 38.002. IMMUNIZATION RECORDS; REPORTING.

(a) Each public school shall keep an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency or by representatives of local health departments or the Texas Department of Health.

(b) Each public school shall cooperate in transferring students' immunization records to other schools. Specific approval from students, parents, or guardians is not required before transferring those records.

(c) The Texas Education Agency and the Texas Department of Health shall develop the form for a required annual report of the immunization status of students. The report shall be submitted by all schools at the time and in the manner indicated in the instructions printed on the form.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

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Language Rights Issues

Lau v. Nichols, 414 U.S. 563 (1974)

The U.S. Supreme Court held (1) that discrimination on the basis of language proficiency is discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964 and (2) that treating people with different needs in the same way is not equal treatment.

Title VI of the Civil Rights Act of 1964 states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

In Lau, the U.S. Supreme Court stated, in part, “Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired these basic skills, is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.”

Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981)

The Court of Appeals articulated a three-part test for assessing a school system's treatment of limited English proficient students. The standard requires (1) a sound approach to the education of these students, (2) reasonable implementation of the approach, and (3) outcomes reflecting that the approach is working.

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Texas Education Code



TITLE 2: PUBLIC EDUCATION

SUBTITLE F: CURRICULUM, PROGRAMS, AND SERVICES

CHAPTER 29: EDUCATIONAL PROGRAMS

SUBCHAPTER A: SPECIAL EDUCATION PROGRAM

Sec. 29.053. ESTABLISHMENT OF BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAMS.

- (a) The agency shall establish a procedure for identifying school districts that are required to offer bilingual education and special language programs in accordance with this subchapter.
- (b) Within the first four weeks following the first day of school, the language proficiency assessment committee established under Section 29.063 shall determine and report to the board of trustees of the district the number of students of limited English proficiency on each campus and shall classify each student according to the language in which the student possesses primary proficiency. The board shall report that information to the agency before November 1 each year.
- (c) Each district with an enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level shall offer a bilingual education or special language program.
- (d) Each district that is required to offer bilingual education and special language programs under this section shall offer the following for students of limited English proficiency:
 - (1) bilingual education in kindergarten through the elementary grades;
 - (2) bilingual education, instruction in English as a second language, or other transitional language instruction approved by the agency in post-elementary grades through grade 8; and
 - (3) instruction in English as a second language in grades 9 through 12.

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The Legal Requirement for School Districts to Translate/Interpret for Parents Who Do Not Speak English

All school districts to which Title VI of the Civil Rights Act of 1964 applies are required by federal law to translate or interpret all documents and communications with parents who are not fluent in English into a language they can understand.

On May 25, 1970, the U.S. Department of Health, Education, and Welfare—the predecessor to the U.S. Department of Education—Office for Civil Rights (OCR) issued formal guidance establishing the policy that “[s]chool districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.” In the 1974 U.S. Supreme Court case, *Lau v. Nichols*, 414 U.S. 563, the Court affirmed the validity of these guidelines. Then in 2000, OCR further reinforced these requirements by issuing a document which stated that “Title VI is violated if . . . parents whose English is limited do not receive school notices and other information in a language they can understand.”

Recent OCR Cases of School Districts Failing to Meet the Requirement

OCR has resolved three recent cases where school districts failed to provide adequate translation and interpretation services to parents who speak a language other than English. In Cleveland, Ohio, a complaint was filed directly to OCR and in Tulsa, Oklahoma and Dearborn, Michigan the school districts were found to violate the law as a result of OCR compliance reviews.

Cleveland Metropolitan School District

The complaint alleged that the school district failed to provide limited English proficient (LEP) parents with information concerning activities and other school-related matters in a language that they could understand. The complaint also alleged the district failed to provide information to LEP parents regarding the proposed expulsion of their son in a language that they could understand.

The resolution reached with OCR requires the district to implement a written plan to provide language assistance to LEP parents. The plan requires notifying parents, in a language they can understand, of the availability of language assistance; identifying which parents need language assistance; ensuring that a list is maintained in each building and on the district level of the parents needing assistance; advising staff of parents’ need for assistance; ensuring that staff obtain adequate translators in a timely manner; and ensuring

that vital documents are translated into each language spoken by parents likely to be affected by the district's programs and activities.

Tulsa Public Schools

The information obtained during OCR's investigation indicated that the school district did not have written policies or procedures for responding to parent requests for documents in languages other than English or for a foreign language interpreter. The district failed to consistently track or keep records relating to which parents in the district are LEP, the requests for translation or interpretation services, and the services provided to LEP parents. The investigation also found that the district did not have a set process in place for notifying LEP parents that it has interpreters and translators available for school-related communications. The district failed to ensure that the interpreters and translators it did have were adequately trained. OCR also noted that the district failed to provide translation and interpretation services for parents who speak languages other than Spanish.

The resolution reached with the district requires it to submit a detailed plan for providing meaningful access to information about its programs and activities for LEP parents. The district must provide language assistance services to all LEP parents and guardians of district students needing such assistance. Also, the district must provide training for administrators and staff regarding the provision of language assistance services as well as ensure that all its interpreters and translators are appropriately trained and proficient in the language for which they provide assistance.

Dearborn Public Schools

The OCR investigation found that the school district did not have an effective process for determining which students have LEP parents and for identifying the language needs of those parents. In addition, the district did not notify any of the LEP parents of the availability of translation and interpretation services, which were not available to all LEP parents, nor did it ensure that the interpreters and translators it was using were competent. While an interpreter for Arabic-speaking LEP parents was typically available, there was no system in place to facilitate communication with a parent who spoke neither English nor Arabic. Also, the district did not have a system in place for notifying district teachers and staff about the needs of LEP parents, and did not provide appropriate guidance to staff about communicating with LEP parents in a language other than English.

The resolution reached with the district requires it to implement a written plan to provide language assistance services to LEP parents that ensures that they have meaningful access to the district's programs and activities. The plan must include the use of various services, such as onsite translators/interpreters, telephonic translators/interpreters, and effective translation programs. Also, the district must revise its home language survey to ensure that it accurately identifies LEP parents in the district needing language assistance.

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Special Education and English Learners

Providing a Special Education Program for English Learner (EL) students may present certain challenges to educators, but the mandates and protections concerning provision of these educational services, found in federal law, are clear.

There are two key fundamental principles which must be observed by a school district in this area.

Both Title VI / EEOA and IDEA Apply

An English Learner student who needs, or could potentially need, Special Education services must be accorded the right to receive both a language acquisition program (such as English as a Second Language or similar services) and Special Education services, not one or the other. Both must be made available to the student.

In joint guidance issued in the form of a Dear Colleague letter, the U. S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice stated:

The Departments are aware that some school districts have a formal or informal policy of 'no dual services,' i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA [Individuals with Disabilities Education Act] and Federal civil rights laws, and the Departments expect SEAs to address these policies in monitoring districts' compliance with Federal law.¹

Language of SPED Testing and Evaluation

When evaluating an English Learner for possible Special Education services, it is important to conduct that evaluation in a manner and language that is comprehensible to the student. If the evaluation is conducted in English and the student does not easily understand English, the evaluation results are likely to be unreliable and lead to a misidentification of the student for Special Education services.

Regarding this issue, the Education and Justice Departments stated in the joint guidance:

When conducting [Special Education] evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other

¹ U.S. Department of Education, Office of Civil Rights/U.S. Department of Justice, Civil Rights Division, *School's Civil Rights Obligations to English Learner Students and Limited English Proficient Parents*, 25 (Jan 7, 2015), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.²

* * *

Recent DOJ Enforcement Agreement

The Department of Justice (DOJ) has entered into a number of consent agreements with school districts under the Equal Educational Opportunities Act of 1974 (EEOA)³ regarding these issues. The most instructive is an agreement entered into in 2014 with the Crestwood School District in Michigan. A 2011 complaint filed with DOJ included a wide range of allegations that, among other things, the Crestwood School District was not providing sufficient language acquisition services or sufficient translation and interpretation services to special education students. The ensuing investigation led to a consent agreement, the elements of which demonstrate what the Government has determined must be provided in situations relating to Special Education and English Learner students:

Crestwood School District Consent Agreement⁴

- Pursuant to the consent agreement, all special education assessments must be conducted in the student's native language or "in the form most likely to yield accurate information" pertaining to an assessment of the student's potential disabilities. Furthermore, the interpretation of these assessments must include consultation with an ESL instructor to ensure that the student's language barrier does not result in a misdiagnosis of special education needs.
- The parents of students with both English language acquisition and special education needs must be informed in writing, in a language they can understand, that their child is entitled to both language acquisition and special education services.
- All "Individualized Education Program (IEP) Teams" that assess the educational needs of special education students and propose appropriate courses of action must include an ESL instructor whenever a plan for a student who is entitled to both special education and language acquisition services is being considered. These teams must document, on at least an annual basis: (1) the student's progress in acquiring English language skills; (2) the extent to which the student's disability is affecting such progress; (3) any decisions regarding the impact of the student's disability on the language acquisition delivery plan, and the rationale for those decisions; and (4) the language acquisition program models and the instructors assigned to the student.

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² Id., at 24

³ The EEOA "requires states and school districts to provide English Language Learner (ELL) students with appropriate services to overcome language barriers..." U.S. Department of Justice, Civil Rights Division, <https://www.justice.gov/crt/educational-opportunities-section>

⁴ U.S. Department of Justice, Civil Rights Division, *Settlement Agreement Between The United States of America and The Crestwood School District*, (October 13, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/08/27/crestwoodagree.pdf>

ACCESS TO POST-SECONDARY EDUCATION FOR IMMIGRANT STUDENTS

There is often confusion between the issue of (1) gaining admission or access to post-secondary education and (2) paying for that education.

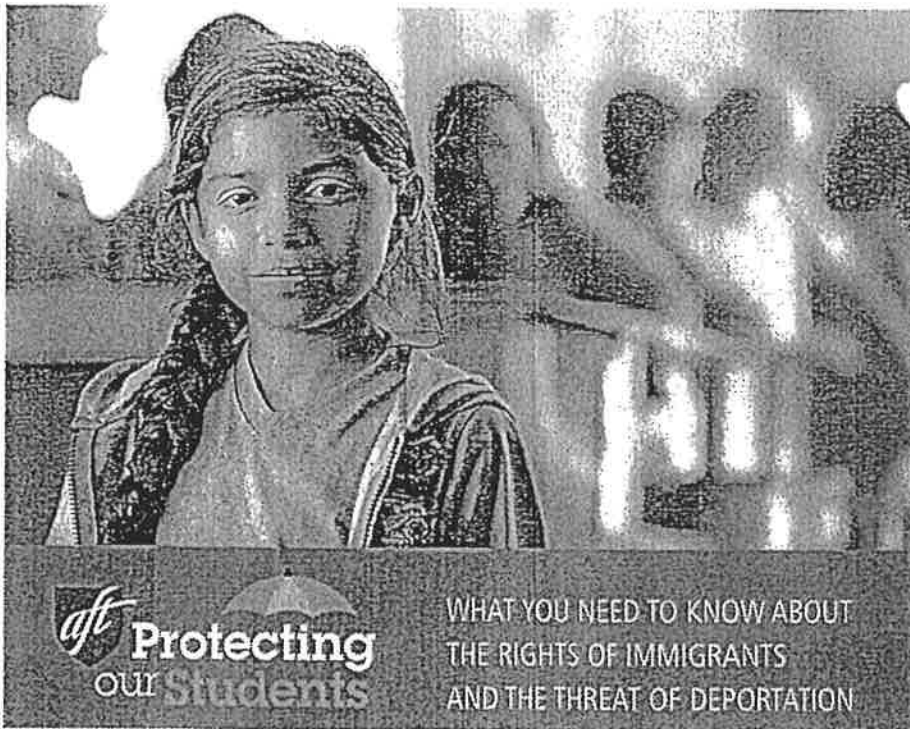
Access: Of all the states and the District of Columbia, only three states currently restrict access to publicly funded colleges by undocumented students: South Carolina, Alabama, and Georgia. (Georgia denies admission to undocumented students to any schools that do not admit all academically qualified students.) All other states allow undocumented students to be admitted to public two year and four year colleges with the same admissions criteria that other students must have to matriculate. Private institutions can do what the institution chooses to do.

In-state/Out-of-state tuition:

The following states allow in-state tuition for undocumented students who graduate from high schools in the state:

California	Minnesota
Colorado	Nebraska
Connecticut	New Jersey
District of Columbia	New Mexico
Florida	New York
Hawaii (University of Hawaii campuses)	Oklahoma
Illinois	Oregon
Kansas	Rhode Island
Kentucky	Texas
Maryland	Utah
Michigan (University of Michigan campuses)	Washington

Access to federal assistance: Undocumented students, including those who have been granted DACA protection, do not have a right to federal loans or grants.



Do's and Don'ts for students and their families if ICE authorities come to their homes

- **Do not open the door.** ICE authorities cannot come in without a signed warrant. Tell them to pass the warrant under the door before you open it.
- **Remain silent.** ICE can use anything you say against you in your immigration case, so claim your right to remain silent! Say **"I plead the Fifth and choose to remain silent."**
- **Do not sign.** Don't sign anything ICE gives you without talking to an attorney.
- **Report the raid immediately to the United We Dream hotline: 844-363-1423**
Take pictures, video and notes: Write down badge numbers, the number of agents, and exactly what happened!
- **Fight back!** Get a trustworthy attorney, contact a local immigrant rights organization and explore all options to fight your case. If detained, you may be able to get bail—don't give up hope!

i All children have a right to a public education

Under federal law, all children, regardless of their citizenship or residency status, are entitled to a K-12 education, including college counseling services. School districts that either prohibit or discourage children from enrolling in schools because they or their parents are undocumented immigrants may be in violation of federal law.

i What the law says about deportation and schools

ICE officers and agents are to refrain from enforcement actions at least at the following locations and events:

- schools (including preschools, primary schools, secondary schools, colleges and universities, and other institutions of learning, such as vocational and trade schools);
- hospitals;
- churches, synagogues, mosques and other institutions of worship, such as buildings rented for the purpose of religious services;
- during funerals, weddings and other public religious ceremonies; and
- during public demonstrations, such as a march, rally or parade.

i What the law says about sharing student information with immigration authorities

Under the Family Educational Rights and Privacy Act (FERPA), schools are prohibited, without parental consent, from providing information from a student's file to federal immigration agents if the information would potentially expose a student's immigration status. For more on FERPA, see familypolicy.ed.gov/ferpa-parents-students.

i Schools must be safe havens, welcoming places of learning, and free from racism, discrimination, and the threat of deportation.

School districts are responsible for ensuring the safety and well-being of all their students. Educators and school support staff can work with community allies to reaffirm that their school and campus is a safe zone.

For more resources and information, contact:

- **American Federation of Teachers**
www.aft.org/immigration
- **Share My Lesson**
www.sharemylesson.com/immigration
- **Colorin Colorado**
www.colorincolorado.org/immigration
- **National Immigration Law Center**
www.nilc.org
- **United We Dream**
www.unitedwedream.org
- **First Focus**
www.firstfocus.org

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