

# KNOW YOUR RIGHTS FOR IMMIGRANT STUDENTS IN NY

## KNOW YOUR RIGHTS



**In New York, everyone between the ages of 5-21 have the right to free public education from grades K-12, regardless of immigration status. Here's what you need to know about your rights in school.**

### SCHOOL ENROLLMENT

#### Can a school require proof of legal immigration status to enroll?

No. Schools cannot ask about you or your parent/guardian's citizenship, immigration status, or social security number. If your school asks for information about your immigration status after you are enrolled, you do not have to answer.

#### What documents do I need to show to enroll in school?

Ask the school district staff for a list of acceptable documentation -- however, the school district cannot refuse to enroll you because you do not have a particular document. Here are some documents they may ask for:

- **Proof of age:** School districts may request a birth certificate or record of baptism. If you do not have a birth certificate, the school district may consider a passport, driver's license, health or hospital records, or other documents.
- **Proof of residency:** School districts may request records such as utility bills, rent receipt, a lease, paycheck stubs, or a statement (known as an affidavit) from your landlord or a housemate.

#### What if I don't have all the required documents when I enroll?

Schools must enroll you immediately even if you need time to compile documents to prove your residency. You have three days to provide this proof after you enroll. If you're unhoused or living in temporary housing and do not have proof of residency, immunizations, or school records, the school district must still enroll you immediately. If this applies to you, ask to speak to the McKinney-Vento coordinator. If the school decides you are not a resident, then it must give you a letter explaining how it reached that decision and how you can appeal.

#### I am 18+ and my school told me I can't enroll because I can't graduate before I turn 21. Is this true?

No. If you have not received a high school diploma yet, you can enroll in a free public school up until you turn 21. Your school cannot discourage you from enrolling just because you are an older student.

### POLICE AND ICE IN SCHOOL

#### Can school police question me about my immigration status or share information about me with federal immigration enforcement?

In general, no. School police only have authority to investigate violations of school policy or other threats to school safety: they do not have authority to ask students questions about their immigration status. If they do, you do not have to answer. The Attorney General and the New York State Education Department (NYSED) have urged local school districts to adopt policies that

prohibit school police from asking students about their immigration status, limit their access to student information, and prevent them from sharing any information with immigration enforcement. If your school district has school police, ask to see the memorandum of understanding between your school and police to check if it includes protections for immigrant students.

#### Can ICE access my school records or other data about me?

- Usually, no. Your parent (or you, if you are over 18) must consent to have your records shared with anyone outside of the school.
- If ICE requests your information, school staff should ask to see the warrant or subpoena. Immigration enforcement can only access your confidential information if they have a signed judicial warrant, or a lawfully-issued subpoena. The school should not share student information without talking to the school district's attorney.
- Check your school district's policies to make sure they have rules for what to do if immigration officers request student data. In most cases, your school must try to contact you before it shares your information so that you can challenge the order or subpoena.
- General information like your name, address, and telephone number, is not legally protected, and could be shared even without a warrant or subpoena. Check your district's policies to see what is classified as "directory information." If you are uncomfortable with this information being shared, you can fill out

an opt-out form to stop your school from sharing it.

### **Can ICE question or detain me at school?**

- In general, no. ICE and police are not allowed to question or detain you at school without parental consent unless there is a judicial warrant, or if there is an urgent safety issue at the school. Administrative warrants are not enough to justify questioning, detaining, or sharing a student's immigration status.
- Check your district's policies to see their guidance on what to do if immigration enforcement tries to question or detain a student at school. Districts should notify parents or guardians and talk to the school district attorney before allowing immigration or local law enforcement officers to question or detain students. If your district does not have any policy on this, you can advocate for them to develop one.

### **Can ICE question or detain me on public transportation, on a school bus, or at a school bus stop?**

It depends. ICE can question you in public spaces such as a bus stop or the subway but you do not have to answer. School buses are not public property, and ICE should not be allowed to board without a signed judicial warrant.

### **What if I am stopped and questioned by ICE?**

- Say "I have a right to remain silent." You do not have to answer any questions about your or your family's immigration status or share any other information.
- Do not lie and do not falsely claim to be a citizen. Lying about your immigration status can be used against you in court.

- You have a right to talk to a lawyer. You should carry your current school ID, driver's license, or NYC ID and make sure your ID cards are not expired. If you are a DACA recipient, TPS holder, or permanent legal resident (green card holder), carry these documents with you.
- Never give a fake ID to any police or immigration officer as it is a serious crime. If you have a passport (valid or expired) from another country, do not carry it with you.

### **PARENTS' RIGHTS**

#### **My parents are undocumented. What rights do they have in my school?**

Parents and guardians have the right to attend and participate in school meetings, make decisions about your education, and receive interpretation and translation, regardless of immigration status. However, many of the laws that protect immigrant students do not explicitly protect parents. For example, while law enforcement generally cannot question or detain you at school, they can question or detain adults who are not enrolled students at the school.

### **BULLYING AND HARASSMENT**

#### **What should I do if I am facing bullying or harassment at school?**

If you are experiencing harassment or bullying because of your race, national origin, or immigration status, you can report it to the designated Dignity for All Students Act (DASA) coordinator at your school. The DASA coordinator must investigate your complaint. Check your district's policies to learn more about the process for investigating DASA complaints and what to do if you are unsatisfied with the outcome of the investigation.

### **ADDITIONAL RESOURCES AND ADVOCACY**

#### **How can I learn more and advocate for more protections at my school?**

- Ask for your school's memorandum of understanding with school police, and advocate for immigrant protections to be included if they are not already.
- Urge your school district to follow the recommendations of the New York Attorney General and New York State Education Department (NYSED) to:
  - Review their data collection practices and decide if collecting information on immigration status (or any information that could accidentally disclose immigration status, including birth, nationality, or passport information) is necessary.
  - Prohibit school police from asking students about their immigration status, and limit their access to student information.
  - Develop a protocol for school staff if ICE seeks to detain or question a student or asks for information about them.
- Advocate for your school district to review their data policies and reclassify any sensitive information as "personally identifiable information" so that it is protected.
- Ask your school to develop policies to protect immigrant students on the school bus, and to train bus drivers' on students' rights.

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Contact us at [schools@nyclu.org](mailto:schools@nyclu.org) if you have questions or need assistance.