

# SCHOOL ENROLLMENT: A FUNDAMENTAL RIGHT

Fall 2019

By Amy Miller, ACLU of Nebraska Legal Director

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

## Introduction

The ACLU has long fought to ensure all kids living in the United States have the right to a free public education. The Constitution requires that all kids be given equal educational opportunity no matter what their race, ethnic background, religion, immigration status, or sex, or whether they are rich or poor. In addition to this constitutional guarantee of an equal education, many federal, state and local laws also protect students against discrimination in education based on sexual orientation, disability, pregnancy, gender identity, if they are experiencing homelessness, and HIV status.

The Nebraska State Constitution promises a free education to all persons between the age of five and twenty one years.<sup>1</sup> Unfortunately, accessing a public education can be difficult for a new immigrant or refugee as well as for children experiencing homelessness or living in the foster care system. As documented in this report, school enrollment policies vary widely from district to district. Some districts' current practices can create barriers that could discourage or prevent a student from accessing their education. In order to ensure all children receive the education they deserve, we've outlined the concerning trends in some districts and given a roadmap for providing better education to all students.

## New Americans in Nebraska

Nebraska is a refugee resettlement site for many new Americans coming from diverse countries such as Bhutan, Bosnia, Burma, Sudan, Syria and Vietnam. In 2016, we were first in the nation for most refugees per capita.<sup>2</sup> According to the most recently available data, Nebraska received 1,194 refugees from the U.S. Department of State in fiscal year 2017.<sup>3</sup>

In addition to refugees, Nebraska welcomes new immigrants every year, though accurate estimates of the number of new immigrants with or without documentation are not available. U.S. Census data shows that there has been an uptick in the number of foreign-born Nebraskans in recent years, from 4.4% in 2000 to 7.5% in 2017.<sup>4</sup>

## Children Experiencing Homelessness in Nebraska

There were an estimated 3,422 public school aged Nebraska children who experienced homelessness in the 2016-2017 school year according to the United States Interagency Council on Homelessness.<sup>5</sup> Some

of those children were completely unsheltered, some were living in homeless shelters, some were temporarily living in hotels, and the majority were living with friends or family members. Some of these are unaccompanied children while some are with their parents, guardians or families during an economic crisis.

Federal law provides protections for children experiencing homelessness to ensure the seamless right to access school free of charge, including remaining in their school of origin even if the family has had to move out of the district due to becoming homeless.<sup>6</sup> Any school district receiving federal funds must comply with the federal law, which means that schools must allow enrollment even if the child lacks normally required documents such as immunization records or proof of residence.

## Children in Foster Care

In addition to children experiencing homelessness, children in foster care often face similar difficulties when they enroll in school because they lack proof of residence. Foster care placement can result in a child being moved across county lines, disrupting

their schooling for days, weeks or months. According to the most recently available data, 7,967 Nebraska children were removed from their home and put into state custody or care in 2018.<sup>7</sup>

## Legal Framework for School Enrollment

State law explicitly protects the rights of any student—whether they are homeless, whether they are undocumented, whether they are fleeing violence as a refugee and lacks basic paperwork—to enroll in public school K-12.<sup>8</sup>

Caselaw also clearly protects the rights of all students to obtain a free public education. In the landmark case *Plyler v. Doe*, the U.S. Supreme Court struck down a Texas law that sought to prevent children who were undocumented from attending K-12 school.<sup>9</sup> The court held the law imposed a discriminatory burden on children on the basis of a characteristic over which children have little or no control. Closing the school house doors to groups of children is contrary to public policy because that could mean making them face fewer opportunities as they grow up, which isn't beneficial for any part of society.

## School Enrollment Policies in Nebraska

In order to evaluate how school policies may impact a new student who is a refugee, an immigrant, a foster child or a child experiencing homelessness, we evaluated the policies of the 20 most racially diverse school districts according to the most recent U.S. Census data.<sup>10</sup> These diverse districts had between 5% and 73% students of color, which is not automatically a proxy for either immigration status or homelessness, but was the data point that was the best publicly available figure to begin an evaluation. We reviewed the enrollment forms available from each district by either accessing the school district's website or obtaining the form directly from the school through an open records request.

We found several areas needing improvement to ensure all children may register for school without barriers.

**Birth certificate requirements:** There is currently a conflict in state law regarding birth certificates for school enrollment that needs clarification to offer clear guidance for school districts. The Nebraska Missing Children Act, passed in 1987, requires school districts to obtain a certified copy of the student's birth certificate or "other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate."<sup>11</sup> The intent of this section is to have school officials notify law enforcement if a missing child is enrolled in their school, but it creates an inevitable tension for families lacking documentation due to their new arrival in the U.S., a personal tragedy, or in the case of a child who is living on their own or in foster care. The statute and regulations instruct schools to enroll a student even without a birth certificate, but there is no direction about what constitutes "other reliable proof of identity." In this vacuum, districts have a patchwork of widely varying requirements: some schools accept a copy of a birth certificate, some require a certified copy with a raised seal and specifically reject a photocopy, and some will accept a parent's affidavit explaining why there is no birth certificate.

**Proof of residence requirements:** There is also wide variation in what documents constitute proof of residency in the district. Neither state statute nor regulation outline what is adequate proof of documentation of living in the district, and there is no consensus among the districts about what a parent or guardian must provide to register their child. For example, a student enrolling in Omaha can bring a utility bill from the gas, electric, or cable company but a student in Columbus can't rely upon the cable bill. Gering will register a child with "any piece of postmarked U.S. Mail," Schuyler will register a child with "any official correspondence

from City, County, State or Federal Agency,” but Omaha and Lincoln would reject any of those as inadequate. Millard won’t accept a driver’s license or DMV documents though most other districts accept them. Families moving between school districts face a bewildering patchwork of requirements.

**Immigration related questions:** Separate from the birth certificate issue, concerningly, over half of the surveyed school districts require information or documentation to enroll that flatly contradicts federal law, state law and state regulation.

Many districts pose questions that appear to be a proxy for inquiring about immigration status:

- U.S. Entry Date and/or the student’s number of years in the U.S.: Bellevue, Crete, Johnson County Central Public Schools, Lexington and Nebraska City all ask these.
- Child’s birth country and/or date entering the U.S.: Grand Island, Lincoln and South Sioux City ask for this, with Lincoln specifically asking parents to check whether the child is a “refugee, migrant, foreign.”
- Parent’s birthplace: Scottsbluff.
- Migrant worker questions: Grand Island, Scottsbluff and Lincoln ask about migrant status or whether the family has moved due to temporary agriculture work.
- Social Security Number: Columbus, Crete and Gering request, sometimes noting “if applicable,” but without the disclaimer required by federal law describing how the information will be used and the right to refuse producing the number.<sup>12</sup>

**Additional concerns with enrollment questions:**

Finally, there was wildly divergent information sought by several districts, raising concerns about the school district’s intention in asking the questions. For example:

- Past history of expulsion: Alliance, Gering, Grand Island and Hastings included questions about whether the new enrollee had ever been expelled.
- Probation or parole: Gering and Hastings.
- Ward of the court or ward of the state: Hastings.
- “Superintendent’s letter if student is in foster care”: Omaha.
- Transcript from prior school: Fremont and South Sioux City require certified transcripts for high school enrollees despite this being specifically forbidden as a prerequisite by state regulation.<sup>13</sup>

**Proactive and accessible school enrollment**

**policies:** We also note with appreciation some individual districts’ efforts to be as proactive and accessible as possible. For example:

- Spanish and English language forms were available from Chase County Schools, Crete, Fremont and Nebraska City. South Sioux City offered forms in English, Spanish and Somali.
- Homelessness questions on enrollment forms in Grand Island and Schuyler specifically included an advisory that the questions were designed to help the school identify additional support services for the student.
- Immigrants without documentation are proactively reassured by Schuyler’s disclaimer: “Information regarding immigrant status is not required or solicited and undocumented students will be enrolled as required by law. Every effort will be made to maintain confidentiality of the information presented below.”

**Solutions Moving Forward**

Continue a strong commitment to educational equity. The Nebraska Department of Education has established a strong clear vision for equity in Nebraska with tools for each school district

to utilize.<sup>14</sup> In 2018, eight leading education groups including the Nebraska Council of School Administrators, the Nebraska School Activities Association, the Nebraska Rural Community Schools Association, the Nebraska Coaches Association and the Nebraska State Athletic Administrators Association signed a “statement of principle on human dignity,” which makes clear discriminatory comments, harassment or intimidation of students are unacceptable – and that school leaders should play an active role in making sure they don’t happen.<sup>15</sup> School leaders from Schuyler<sup>16</sup> to Lincoln<sup>17</sup> have made strong statements in support of welcoming all students which should be commended. Ensuring equity in school enrollment forms, policies, and practices is one clear way to extended equity to the first point of contact in Nebraska schools.

Statewide uniform enrollment form: Parents, guardians, and school children should not face a patchwork quilt of requirements to enroll in school. Nebraska should have a single uniform school enrollment form such as that already promulgated by the Nebraska Department of Education rather than leaving enrollment requirements up to individual school boards.

District review of practices, forms and public websites: Schools should think carefully about whether intimidating language on their websites about civil or criminal penalties related to enrollment is welcoming and inclusive. Schools should examine existing enrollment forms and website information to see if they met best practices for facilitating enrollments among non-English speaking parents, for students who are not yet citizens, for students who are in foster care or experiencing homeless, and for facilitating enrollments among Nebraskans in need of disability accommodations.

State law itemizing appropriate documents: Other states have balanced the need to verify a child’s age or domicile with maximizing access to school by modernizing their state laws to accept a broader range of documents. For example, California accepts not just a birth certificate but also a baptism certificate or an affidavit from a parent that attests to the child’s date of birth.<sup>18</sup> Nebraska should codify the requirements for birth certificate, proof of residence, or other required documentation in state law to prevent barriers at the local level. This will also address the competing demands of the Nebraska Missing Children Act.

Training: All district officials should be required to review their current policies and practices to ensure that front line staff are familiar with relevant caselaw, the federal law protecting homeless students, and state statutes and regulations about enrollment.

## Conclusion

All Nebraskans do better when our public schools are open to everyone without barriers. At a time when fear, discrimination and exclusion of immigrants is at an all-time high, we must ensure that every child is protected. Given the fact that the Constitution guarantees an education for every child, this fundamental right needs the best policies and practices in place to make the right a reality. Bringing uniformity and clarity to school enrollment policies will ensure that every child has the opportunity to access an education.

## Citations

<sup>1</sup> Neb. Const. Article VII-1

<sup>2</sup> Emily Nohr, “A welcoming state: Nebraska led the nation in resettling most refugees per capita in the last year,” Omaha World Herald, December 9, 2016. [https://www.omaha.com/news/metro/a-welcoming-state-nebraska-led-the-nation-in-resettling-most/article\\_b84f8b71-d374-5cda-ad33-afa9a923fb54.html](https://www.omaha.com/news/metro/a-welcoming-state-nebraska-led-the-nation-in-resettling-most/article_b84f8b71-d374-5cda-ad33-afa9a923fb54.html)

<sup>3</sup> U.S. Department of State, Proposed Refugee Admissions for Fiscal Year 2019 (September 2018) <https://www.state.gov/remarks-and-releases-bureau-of-population-refugees-and-migration/proposed-refugee-admissions-for-fiscal-year-2019/>

<sup>4</sup> Nebraska Demographics, Migration Policy Institute. <https://www.migrationpolicy.org/data/state-profiles/state/demographics/NE>

<sup>5</sup> Nebraska Homelessness Statistics, U.S. Interagency Council on Homelessness. <https://www.usich.gov/homelessness-statistics/ne/>

<sup>6</sup> McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.

<sup>7</sup> State of Nebraska Foster Care Review Office Annual Report 2017-2018, page iv. <http://www.fcro.nebraska.gov/pdf/FCRO-Reports/2018-annual-report.pdf>

<sup>8</sup> Neb. Rev. Stat. 79-215. See also Nebraska Department of Education Regulations Regarding School Enrollment, Title 92, Nebraska Administrative Code, Chapter 19, available online: [https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule19\\_2017.pdf](https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule19_2017.pdf)

<sup>9</sup> Plyler v. Doe, 457 U.S. 202 (1982)

<sup>10</sup> Alliance, Bellevue, Chase County Schools (Imperial), Columbus, Crete, Fremont, Gering, Grand Island, Hastings, Johnson County Central (Tecumseh), Lexington, Lincoln, Millard, Nebraska City, Norfolk, North Platte, Omaha, Schuyler, Scottsbluff, South Sioux City.

<sup>11</sup> Neb. Rev. Stat. 43-2007(2)

<sup>12</sup> Nebraska regulations specifically prohibit submission of a social security card or number (School Enrollment, 92 Neb. Admin. Code at 19, 003.02A). Federal law prohibits this under the Privacy Act of 1974: “It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.” 5 U.S.C. § 552a

<sup>13</sup> Id. at 19, 003.02C.

<sup>14</sup> Nebraska Department of Education, Statement on Equity. <https://www.education.ne.gov/commissioner/equity/>

<sup>15</sup> Margaret Reist, “Nebraska education groups pledge to challenge those who make discriminatory comments or harass students,” Lincoln Journal Star, August 22, 2018. [https://journalstar.com/news/local/education/nebraska-education-groups-pledge-to-challenge-those-who-make-discriminatory/article\\_0a48d063-a610-5c55-a32b-5d3b8b15513a.html](https://journalstar.com/news/local/education/nebraska-education-groups-pledge-to-challenge-those-who-make-discriminatory/article_0a48d063-a610-5c55-a32b-5d3b8b15513a.html)

<sup>16</sup> Marjie Ducey, “Nebraska high school A.D. writes column about the racism his students face,” Omaha World Herald, May 20, 2017. [https://www.omaha.com/news/nebraska/nebraska-high-school-a-d-writes-column-about-the-racism/article\\_9d32a9b4-31c6-11e7-bf77-f7e2d1e26969.html](https://www.omaha.com/news/nebraska/nebraska-high-school-a-d-writes-column-about-the-racism/article_9d32a9b4-31c6-11e7-bf77-f7e2d1e26969.html)

<sup>17</sup> Lincoln Public Schools, “A message from LPS Superintendent Steve Joel,” August 2019. <https://www.lps.org/post/detail.cfm?id=13809&fbclid=IwAR1ALM-hsNHLZZpEiHQdKfBH10w8U8B-hPeX6IvvaY-mHmsEfYZ4-zagMR8>

<sup>18</sup> Cal. Educ. Code § 48002 (1990). [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=48002.&lawCode=EDC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=48002.&lawCode=EDC)