

What School Districts Need to Know About the New Public Charge Regulations

The Public Charge provision has been a longstanding part of U.S. immigration policy. Under longstanding regulations, if an individual was likely to become a “public charge” based on their receipt of “public benefits,” that person could be denied entry or permanent residency to the United States. On August 14, 2019, the Department of Homeland Security promulgated a controversial new Public Charge Rule that expanded the definition of “public benefit.” Previously, only cash benefits were considered. Now, under the new rule, officials must consider non-cash benefits as part of its analysis for granting and denying applications.

The new rule was challenged in litigation and immediate implementation of the rule was barred by nationwide preliminary injunction orders entered by federal district courts within the Ninth, Fourth, and Second Circuits. The Ninth and Fourth Circuit Courts of Appeals lifted the nationwide injunctions. The Second Circuit affirmed the nationwide preliminary injunction. However, on January 27, 2020, the United States Supreme Court voted (5-4) to stay the Second Circuit’s preliminary injunction order, permitting the Department of Homeland Security to implement the new controversial public charge regulations while litigation challenging their validity is ongoing. The following Q&A addresses questions about the new public charge regulations that are likely to be posed by school officials:

Who do the new rules apply to?

This rule applies to individuals seeking admission to the United States or permanent residency (Green Card status). This rule does not apply to naturalization proceedings; refugees; asylum seekers; and individuals enlisted in the Ready Reserve, or serving in active duty in the U.S. Armed Forces.

What public benefits are considered in the new public charge regulations?

- Any Federal, State, local or tribal cash assistance, including Supplemental Security Income “SSI”; Temporary Assistance for Needy Families “TANF”; and General Assistance programs
- Supplemental Nutritional Assistance Program “SNAP”
- Medicaid for adults (see below)
- Section 8 housing assistance and rental assistance

What public benefits are not included in the new public charge regulations?

Notwithstanding this potential chilling effect of the regulations, as described below, it is important for schools to understand that most public benefits for children are expressly excluded from the new public charge regulations. The following public benefits are not included in the public charge analysis:

- School lunch or breakfast programs
- Medicaid benefits for an emergency medical condition
- Services paid by Medicaid but provided under the Individuals with Disabilities Education Act to a student with an IEP
- School-based medical services or benefits at the high school level or below
- Medicaid benefits received by a person under age 21 or a pregnant woman
- Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”)
- Medicaid received by pregnant women

- Tax credits
- Emergency aid, emergency medical assistance, or disaster relief (including D-SNAP)
- Section 515 rural rental housing program and Section 514/516 farm labor housing program
- Employment and job training programs
- Transportation vouchers or non-cash transportation services
- State, local or tribal programs, other than cash assistance, that are not federal (such as state medical insurance program)
- Benefits received by your family members
- Child development (such as Head Start or Early Head Start)
- Energy assistance

What about the “chilling” effect of the new regulations?

Notwithstanding the exclusion of many benefits for children, school districts nonetheless need to familiarize themselves with the parameters of the new public charge regulations because parents and caregivers may be reluctant to permit their children to receive school-based benefits, due to fear of immigration-related consequences. Many education advocacy groups, including the National School Boards Association (NSBA), have opposed the new public charge regulations based on research that indicates that programs such as SNAP, Medicaid, CHIP, and housing assistance in childhood help children complete their education and have higher incomes as adults, live in stable housing, receive needed health services and consume adequate and nutritious food, and fosters their future success in education and the workforce. The overwhelming concern of school groups is that these policy changes will have a “chilling effect.” In particular, commenters fear that the rule will cause aliens and citizens to either disenroll from public benefit programs or forego enrollment in public benefit programs.¹ Disenrollment is projected to happen even in programs that are not included in the public charge analysis, such as Medicaid-reimbursable IDEA services and school lunch/breakfast programs. The School Superintendents Association commented that this disenrollment could occur because immigrant families “do not understand the rule’s details and would fear their or their children’s enrollment could negatively affect their or their family members’ immigration status.”²

Of course, it should be remembered that that children who are living in the United States have a right to attend public schools, regardless of their immigration status.³ Schools are legally prohibited from asking about a student’s or family’s immigration status.

If you have any questions about this memo, please contact [Kate I. Reid](#), [Elizabeth Lehmann](#), any of the [attorneys](#) in Bond’s [School Law Practice](#), or the attorney at the firm with whom you are regularly in contact.

¹ See Fed. Reg. 41501, at 41310.

² Comment to proposed rule, The School Superintendents Association (Dec. 1, 2018), available [here](#).

³ Plyler v. Doe, 457 U.S. 202 (1982).



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