

Immigrant Students' Rights to Attend Public Schools

School Opening Alert

This alert is a reminder that public schools, by law, must serve all children.

The education of undocumented students is guaranteed by the *Plyler vs. Doe* decision and certain procedures must be followed when registering immigrant children in school to avoid violation of their civil rights.

The U.S. Department of Justice and the U.S. Department of Education published in May a letter advising school officials that activities that deny or discourage students to attend school are unlawful. The letter begins, "Under federal law, state and local educational agencies are required to provide all children with equal access to public education at the elementary and secondary level."

In *Plyler vs. Doe*, the U.S. Supreme Court ruled that children of undocumented workers have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other students, children of undocumented workers in fact are required under state laws to attend school until they reach a mandated age.

The Supreme Court arrived at this decision because such practices that deny or discourage immigrant children and families from public schooling:

Victimize innocent children – Children of undocumented workers do not choose the conditions under which they enter the United States. They should not be punished for circumstances they do not control. Children have the right to learn and be useful members of society.

Are counterproductive for the country – Denying children access to education does not eliminate illegal immigration. Instead, it ensures the creation of an underclass. Without public education for children, illiteracy rates will increase and opportunities for workforce and community participation will decrease. Recent research has proven that for every \$1 spent on the education of children, at least \$9 is returned.

Waste valuable time while losing sight of principal goals of public education – Rather than teaching students, school officials would spend their time asking our millions of school children about their citizenship status. States would be forced to spend millions of dollars to do the work of the U.S. Immigration and Customs Enforcement (ICE) agency.

Promote misinformation – Incorrect assumptions and

inappropriate figures have been used to blame immigrants and their children for economic problems.

Encourage racism and discrimination – In turbulent, financially troubled times, immigration often becomes a focal point of public discourse. Many consider a preoccupation with the immigration status of children of undocumented workers to be a form of discrimination and racism.

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 differently 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; or
- require social security numbers from all students, as this may expose undocumented status.

Students without a social security number 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 for a student need only state on the application that they do not have a social security number.

The *Family Education Rights and Privacy Act* prohibits schools from providing any outside agency – including the ICE agency – with any information from a child's school file that would expose the student's undocumented status. The only exception is if an agency gets a court order (subpoena) that parents can then challenge. Schools should note that even requesting such permission from parents might act to "chill" a student's *Plyler* rights.

Finally, school personnel – especially building principals and those involved with student intake activities – should be aware that they have no legal obligation to enforce U.S. immigration laws.

At IDRA, we are working to strengthen schools to work for all children, families and communities. Help us make this goal a reality for every child; we simply cannot afford the alternatives. Denying children of undocumented workers access to an education is unconstitutional and against the law.

Feel free to copy this alert and share it.

You can also visit IDRA's website for a printable flier in English and Spanish as well as a copy of the letter from the U.S. Department of Justice and the U.S. Department of Education.

For assistance in ensuring that your programs comply with federal law, you can contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at 877-292-3804 or education@usdoj.gov, or the Department of Education Office for Civil Rights (OCR) at 800-421-3481 or ocr@ed.gov. You may also contact the OCR enforcement office that serves your area.

For more information or to report incidents of school exclusion or delay, call:

- META (Nationwide) 617-628-2226
- MALDEF (Los Angeles) 213-629-2512
- MALDEF (San Antonio) 210-224-5476
- NY Immigration Hotline (Nationwide) 212-419-3737
- MALDEF (Chicago) 312-427-0701
- MALDEF (Washington, D.C.) 202-293-2828

Printable versions of this alert are online in English and Spanish at www.idra.org

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