



Fairness under the law

District obligations to noncitizen students

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Following his inauguration, President **Donald Trump** and his administration issued several executive orders and guidance memos related to changes in federal immigration policy. Although the orders' legal status is now under review, it's important for schools to know their obligations and responsibilities for undocumented students and their families so federal and state laws are not violated.

Legal background

All children in the U.S. are entitled to a basic public education regardless of race, color, national origin, citizenship, immigration status or their parents' immigration status.

In 1982, the U.S. Supreme Court held in *Plyler v. Doe*, 457 U.S. 202 (1982), that the undocumented or noncitizen status of a student or his or her parent or guardian is irrelevant to the student's entitlement to an elementary and secondary public education. The court found that denying students a basic education because of their immigration status was denying them "the ability to

live within the structure of our civic institutions and foreclose(s) any realistic possibility that they will contribute in even the smallest way to the progress of our nation." The court also observed that "(e)ven if the state found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice."

District inquiries

To comply with federal civil rights laws and the holding of the Supreme Court in *Plyler*, districts should carefully review their enrollment practices and procedures to ensure students are not barred from enrolling because of their immigration status or their parents' immigration status.

Schools should not inquire about a student's immigration status to establish residency in the district. Districts may require students or their parents to provide proof of residency within the district, including copies of phone or utility bills or lease agreements.

However, inquiring about students' citizenship or immigration status or their parents' citizenship or immigration status by requesting copies of passports or visas is inappropriate.

Similarly, a district may not deny enrollment if a student chooses not to provide a Social Security number. If the district chooses to request a Social Security number, it must inform the individual that the disclosure is voluntary; provide the statutory or other basis upon which it is seeking the number; and explain how the district will use it.

Schools may need to collect and maintain information related to participation in programs or activities that may be associated with immigration status. For example, schools are required to collect information to assess students' English language proficiency to identify English learners. However, gathering and maintaining only the narrow categories of information necessary for schools to meet their obligations helps ensure equal access to education for all students, as required by federal and state law.

Interactions with immigration authorities

As mentioned earlier, districts have an obligation to provide all children with equal access to school, regardless of their immigration status. However, the question may arise as to whether the district, after enrolling the student, has a duty to report the undocumented student and his or her family to immigration authorities, including U.S. Immigration and Customs Enforcement (ICE).

A federal district court addressed this

issue in 1995 and held that reporting undocumented students could conflict with the *Plyler* mandate that all undocumented children have access to education. If school authorities report an undocumented student to immigration authorities and the student is then removed from school, the district's actions could be viewed as having denied or curtailed that student's access to school.

In addition, the Family Educational Rights and Privacy Act (FERPA) prohibits school districts from disclosing personally identifiable information in a student's education records to outside agencies without parental consent or a subpoena. If a school has recorded and maintained information about a student being undocumented, this information would be part of the student's education records. The voluntary release of such information by a district could violate FERPA.

A school may disclose personally identifiable information without consent to comply with a judicial order or lawfully issued subpoena. In most cases, a school must make reasonable efforts to inform a parent or eligible student before following a judicial order or subpoena to give the parent or student time to seek a protective order or other

relief. A school that receives a judicial order or subpoena for information or documents should work with legal counsel to determine how best to respond.

It's unlikely immigration enforcement actions will happen on school property. At this time, it appears ICE is following the prior administration's policy of generally avoiding enforcement actions at sensitive locations. Schools are among the places defined as sensitive locations. This includes school grounds, locations where scholastic or education-related activities or events are taking place and school bus stops when students are present.

If ICE officers come to a school, district personnel should refer them to school administrators who should contact the superintendent and district legal counsel. Remember that even student names can be protected under FERPA, and the school should not immediately disclose whether a student attends the school or is there that day.

Freedom from discrimination and harassment

All students have the right to be safe at school. Schools must take incidents of bullying and harassment at school very seriously. Among other things, Ohio

Revised Code 3313.666 requires school districts to have policies against bullying and harassment; provide procedures for responding to and investigating any reported incidents; and implement strategies for protecting victims from new or additional bullying or harassment.

Schools can face significant liability if they fail to take appropriate action when students are bullied or harassed based on perceived or actual race, national origin or any other protected status.

OSBA will monitor relevant federal and state legislation, update policies and provide additional information, as needed. Districts also are encouraged to review the National School Board Association's publication *Lifting the Lamp: Beside the Schoolhouse Door*, available at <http://links.ohioschoolboards.org/67481>. Updated in July, it serves as an additional resource for schools in this area of the law. If you have questions, please contact OSBA's Division of Legal Services at (800) 589-OSBA or (614) 540-4000. ■

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