

IMMIGRANT STUDENTS' RIGHTS

Paula attempts to register her 5-year-old child, who is entering school for the first time, in the school district in which Paula resides doubled-up with a relative. The enrollment form given to her by school district staff states that, in order to prove residency, "All parents/guardians must provide a current Illinois driver's license or state identification card with an address within district boundaries." Paula leaves the school without enrolling because she is afraid to reveal to school staff that she cannot obtain a driver's license because she is an undocumented immigrant. After showing the enrollment form to a relative, the relative calls the school to ask about enrolling the child. Staff at the school tells the relative, "Sorry, but one of the proofs of residency must be a driver's license or a state ID."

Consider:

- What went wrong?
- What should have been done?
- What is the likely effect of a requirement that the enrolling adult must produce a driver's license or state identification card?

Do all school-age children have the right to an education regardless of their immigration status?

Undocumented school-age children have the same right as U.S. citizens and permanent residents to an education without regard to their immigration status. This right was made clear by the United States Supreme Court in Plyler v. Doe, 457 U.S. 202 (1982). The Plyler decision establishes that public schools are prohibited from:

- denying enrollment to undocumented students;
- engaging in practices that might "chill" undocumented students and their families from accessing educational services
- requiring disclosure of the immigration status of a parent or child;
- making inquiries of children or parents that might reveal their immigration status;
- requiring social security numbers (or documents that can only be obtained by those with social security numbers) as a prerequisite to school enrollment.

Any school district action which has the effect of denying an undocumented student access to public education is unlawful.

Can a school report a student's immigration status to the INS or any other agency?

School student records – including information about a student's immigration status – are confidential and shall not be disclosed to anyone unless the parent consents. There is both a federal law, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and a state law, the Illinois School Student Records Act, 105 ILCS 10/1 et. seq., governing the confidentiality and disclosure of school records.

Are there special considerations for language minority students and families?

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin (among other bases). Title VI protects Limited English Proficiency (LEP) students whose English language skills are limited such that they are unable to participate in regular education programs. The Office of Civil Rights for the United States Department of Education (OCR) requires districts to take affirmative steps to rectify student language deficiencies so that they can have full access to regular educational programs. In addition, it is important for schools to offer written materials in the language spoken in the home and to have a translator available for communication with parents. OCR offers training and other materials to districts regarding compliance with Title VI.

Return to the problem and consider the following questions:

What went wrong?

Paula was not identified as homeless and her child was not immediately enrolled even without the documents normally required to prove residency in accordance with the McKinney-Vento Act and the Illinois Education for Homeless Children Act. Further, as an undocumented child, Paula's child has the right to an education. The school required a document – here, a driver's license or state identification card -- that can only be obtained by those with social security numbers. Such a requirement can “chill” or deter undocumented children from accessing school. Finally, as a general residency matter, the school should not insist on one form of proof of residency and instead should have a flexible approach.

What should have been done?

Paula's child should have been identified as a child experiencing homelessness and immediately enrolled regardless of whether Paula could produce the necessary documents. The school should not have a requirement that parents must produce a document that is only available to those with social security numbers. The school could ease the fears of undocumented families by stating that any information that the school collects is confidential. The school should have a more flexible residency policy and allow parents to prove residency by a variety of means.

What is the likely effect of a requirement that the enrolling adult must produce a driver's license or state identification card?

Such a requirement is likely to deter children of undocumented parents from enrolling in and attending school. As in Paula's case, parents will likely be fearful of admitting that they cannot obtain a driver's license due to their immigration status. Parents will also likely be afraid that the school might reveal their immigration status to the Immigration and Naturalization Service or other agency. Therefore, such a requirement runs afoul of the protection provided to undocumented children. While schools can accept a driver's license as one document that can prove residency, they cannot insist that every parent must produce a driver's license in order to enroll a child.