

# **MALDEF**

**THE RIGHTS OF IMMIGRANT STUDENTS**

# Illinois State Constitution

- Article X, Section 1 Illinois State Constitution
  - The State *shall* provide for an efficient system of high quality public educational institutions and services.
  - Education in public schools through the secondary level shall be *free*.

# State Statute

- Illinois Statutory Law
  - Illinois School Boards must establish free schools for *all children* between the ages of five (5) and twenty-one (21) who reside in the school districts. 105 ILCS 510-20.12.

# Are Immigrant Children Entitled to a Free Public Education?

- **YES!**

- In 1982, the U.S. Supreme Court established this right in *Plyler v. Doe*.

- Undocumented children have the same right as U.S. citizens and legal permanent residents to receive a free public education.

# Explanation of Plyler

- Public education is unlike any other public benefit because of the role it plays in sustaining our “political and cultural heritage.”
- Deprivation of public education punishes a class of individuals not responsible for their legal status.
- Deprivation of public education is an “*ineffectual attempt to stem the tide of illegal immigration*” as compared to other alternatives.

# Significance of Plyler Today

*Any action* by a school district that has *the effect* of denying access to a free public education to an immigrant student will be deemed *unconstitutional*.

# Enrollment Policies

Districts must implement policies that are effective to limit school enrollment only to students who live within their boundaries, but *do not limit access* to immigrant populations residing in those districts.

# How to Draft an Effective (and Lawful) Enrollment Policy?

A child's residence for school purposes is the residence of the person who has *legal custody* of that child. Thus, under 105 ILCS 510-20.12 of the School Code, two key things must be proven before a child may be enrolled in school:

1. **Legal Custody**; and
2. **Residence** of legal custodian within the district.

The manner in which legal custodians are asked to prove custody and residence is what determines whether an enrollment policy is in accordance with federal and state law.



# Legal Custody

“Legal custody” for *school purposes* is custody exercised by:

- (i) A natural or adoptive parent;
- (ii) An adult that was granted custody by order of a court;
- (iii) An adult caretaker, with whom the student resides, who is receiving public aid for the student;
- (iv) An adult who demonstrates that he/she assumes and exercises legal responsibility for the student and provides the student with a regular fixed night-time residence. 105 ILCS 5/10-20.12(b)(2)(ii).

# Is Legal Guardianship Required to Prove Legal Custody?

- **NO!**
  - Under Illinois law, it is *unlawful* for a district to deny a student, who resides within its boundaries, access to its schools simply because his/her caretaker does not have legal guardianship (court-ordered custody).
  - School officials *cannot* mandate adult caretakers to obtain legal guardianship as a prerequisite for enrollment.

# Transfer of Legal Custody

- **Legitimate reasons for transfer of custody, include, but are not limited to:**
  - Need for adequate supervision;
  - Economic hardship or homelessness;
  - Reliance on extended family members to raise one's children as a cultural norm;
  - Parental illness or divorce

# Residency – How to Prove it?

- Acceptable means to establish residency include, but are not limited, to:
  - (i) Notarized affidavit of homeowner or person renting an apartment (in cases where adult caretaker does not own or rent a home in his/her name).
  - (ii) Confirmation by a school district's truant officer or social worker.
  - (iii) Letter from local clergy or public agency.
  - (iv) Utility bills, bank accounts, insurance policies.
  - (v) Driver's license or state identification, *so long as* they are *not* strictly required.

# What Makes an Enrollment Policy Unlawful?

- (i)** Requirement that caretaker obtain legal guardianship.
- (ii)** Requirement to disclose a student or caretaker's immigration status.
- (iii)** Conditioning services or benefits upon obtaining the social security number of the student or adult caretaker.
- (iv)** Requirement that parent or caretaker prove residency through documents that only a citizen or legal permanent resident could obtain, such as a drivers license, state identification card, or voter registration card.

# Conclusion

To ensure compliance with federal and state law

- A district's enrollment policy should be *flexible* to allow caretakers to prove **legal custody** and **residency** through various means.