



## Fact Sheet: Undocumented Students & Families in Schools

### Background

The ACLU has received numerous inquiries, questions, and concerns about the vulnerabilities and rights of immigrant and perceived immigrant students in the Arizona public education system. Educators and school districts have been among those seeking guidance on how best to serve their immigrant students and meet their legal obligations. It is important to safeguard the right of equal access to education for immigrant students and all students. This fact sheet can help any school district ensure that all students are welcomed and protected.

### The Facts

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.<sup>1</sup>

Federal law specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”<sup>2</sup>

The Supreme Court, in the case *Plyler v. Doe*,<sup>3</sup> also held that discrimination on the basis of immigration status in access to basic public education violates the Constitution. As the Court explained, denying access to education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”<sup>4</sup>

Requiring students or students’ parents to provide schools with information regarding their immigration status, or taking other actions that significantly interfere with the right to a basic public education, violates the constitutional principles set out in *Plyler*.<sup>5</sup>

### What You Need to Know

- Schools cannot require students to provide a social security number and, consistent with *Plyler*, should identify a range of documents (e.g. birth certificate, family bible, parent affidavit) that may be used to establish a child’s age.
- To further remove barriers to enrollment, schools can limit the information required to enroll to proof of residency, proof of age, and immunization records, and request any other information after enrollment.
- Schools may not require students to provide proof of immigration status and should not ask students for information such as social security numbers or place of birth that may indicate a student’s immigration status.
- Schools should advise families about a range of means to establish proof of age.

### Things to Note

U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) maintain a policy which provides that ICE and CBP will not engage in immigration enforcement in sensitive locations like schools absent prior approval by a supervisor or exigent circumstances.<sup>6</sup> The Department of Homeland Security recently reaffirmed this policy.<sup>7</sup> This means that ICE and CBP generally will not arrest, interview, search, or surveil a person for immigration enforcement purposes while at a school, a known school bus stop, or an educational activity.<sup>8</sup>

<sup>1</sup> Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI, 42 U.S.C. § 2000d (recipients of federal funds).

<sup>2</sup> 28 C.F.R. § 42.104(B)(2); 34 C.F.R. § 100.3(b)(2); see also U.S. Dep’t of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep’t of Just., Civil Rights Div., *Dear Colleague Letter: School Enrollment Procedures 1* (May 8, 2014).

<sup>3</sup> 457 U.S. 202 (1982).

<sup>4</sup> *Id.* at 223.

<sup>5</sup> See *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1245 (11th Cir. 2012); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995), on reconsideration in part, 997 F. Supp. 1244 (C.D. Cal. 1997).

<sup>6</sup> U.S. Immigration and Custom Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

<sup>7</sup> U.S. Department of Homeland Security, Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement (Feb. 21, 2017) (“Q28: The implementation guidance references rescinding all previous immigration enforcement memos. Does this include the ICE and CBP memorandum on sensitive locations? A28: No, the sensitive locations guidance remains in effect for both ICE and CBP.”), <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>.

<sup>8</sup> Specifically, the sensitive locations memo includes these locations: “Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop . . .” U.S. Immigration and Custom Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.