

PRESENTED AT

33<sup>rd</sup> Annual School Law Conference

February 22, 2018

Austin, Texas

## Immigration Issues in Public Schools

Presented by:

**Juan J. Cruz**

Author Contact Information:

Juan J. Cruz

J. Cruz & Associates, LLC

216 W. Village Blvd., Suite 202

Laredo, Texas 78041

[jcruz@jca-law.com](mailto:jcruz@jca-law.com)

Telephone: (956) 717-1300

Facsimile: (956) 717-0539

Coauthors:

Stephen Villarreal

Ben Nabors

## ***I. Introduction***

This paper focuses on the service of undocumented students in public schools. In light of the current political climate, questions often arise regarding a school district's responsibilities in relation to undocumented students. The paper begins by exploring the ramifications of the 1982 Supreme Court decision in *Plyler v. Doe*, the only Supreme Court case directly addressing the issue of undocumented students in public schools. A school district's right to request student documentation is then discussed, raising issues of both state and federal law. Next, the paper addresses the topic of immigration enforcement efforts and their impact on public schools. Three specific situations are explored: (1) an ICE agent showing up at school during school hours and inquiring about a student; (2) a school bus crossing an interior border patrol checkpoint, and; (3) a student's parents being detained by immigration officials while the student is in school. Finally, the paper explores the current political climate regarding immigration enforcement and its potential impact on schools. The paper concludes by providing suggestions for additional resources to explore.

## ***II. The Legal History of Serving Undocumented Students in Public Schools***

When considering the service of undocumented students in public schools, the first, and most important, question that arises is whether states have a duty to provide a tuition-free education to undocumented students. In the landmark case of *Plyler v. Doe*, the Supreme Court answered this question in the affirmative.<sup>1</sup> The Court in *Plyler* held that a Texas statute, which withheld state funds for the education of students "not legally

---

<sup>1</sup> *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

admitted” into the United States and permitted school districts to deny enrollment to such students, violated the Equal Protection Clause of the Fourteenth Amendment.<sup>2</sup>

The Fourteenth Amendment of the United States Constitution prohibits any state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”<sup>3</sup> In the context of the Fourteenth Amendment, the term ‘any person’ encompasses all individuals within a jurisdiction, irrespective of the legality, or lack thereof, of the individual’s presence in the United States.<sup>4</sup> The Equal Protection Clause requires that all persons similarly circumstanced be treated alike.<sup>5</sup> In *Plyler*, the Court determined that denying students, “not legally admitted” into the United States, a free education provided to all other students in Texas, constituted differential treatment.<sup>6</sup> Therefore, the practice violated the Equal Protection Clause of the Fourteenth Amendment, absent a showing that the distinction advanced “some substantial state interest.”<sup>7</sup>

According to the Court, the school district had no rational basis to deny undocumented students a public education based on their immigration status, given the harm the policy would inflict on these students and society.<sup>8</sup> “By denying these children a basic education,” the Court said, “we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in

---

<sup>2</sup> *Id.*

<sup>3</sup> U.S. CONST. amend. XIV, § 1.

<sup>4</sup> *See Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953) (noting that an illegal alien may only be expelled from the United States after proceedings consistent with due process of law).

<sup>5</sup> *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

<sup>6</sup> *Plyler*, 457 U.S. at 230.

<sup>7</sup> *Id.* (holding that the state’s proffered justifications for denying undocumented students a free education, namely, protection from an influx of illegal immigrants, preservation of state resources, and the lesser likelihood that undocumented students will use their education for productive purposes within the state, did not qualify as furthering a “substantial state interest”).

<sup>8</sup> *Id.* at 223.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Immigration Issues in Public Schools

First appeared as part of the conference materials for the  
33<sup>rd</sup> Annual School Law Conference session  
"Immigration Issues Affecting Public School Districts"