

Memorandum

To: Education Leaders
From: EducationCounsel
Date: September 5, 2017
RE: Undocumented Students' Rights of Equal Access to K-12 Public Schools

This memo responds to the Trump Administration's announcement of its intention to rescind the Deferred Action for Childhood Arrivals (DACA) program over the next 6 months. That action, which is expected to be challenged in court, does not in any way undercut the clear legal rights of undocumented students to attend K-12 public schools free of impediment and harassment. This memo outlines the settled rights of students, regardless of immigration status, to equal access to public education.

The U.S. Constitution, U.S. Supreme Court decisions and federal laws establish clear protections for undocumented students with the right to enroll in elementary and secondary public schools, and to receive the same benefits and services of public education as other students. States, districts and schools have the obligation to uphold those rights, irrespective of status of students in DACA. Our aim in this memo is to briefly outline these longstanding federal protections.¹

The U.S. Constitution's Equal Protection Clause Guarantees All Students Equal Access to Public K-12 Education Regardless of a Student's Immigration Status

All students have the right to enroll and attend public schools, free of discrimination, including discrimination based on their or their parents' real or perceived immigration status. In its landmark decision in 1982, the Supreme Court in *Plyler v. Doe*² held that the undocumented status of a student or his or her parent(s) or guardian(s) does not affect a student's right to a public K-12 education. The Court based its decision on the U.S. Constitution's Equal Protection Clause, which guarantees *all persons* equal protection under the law – regardless of immigration status – and prohibits discrimination in the application of laws.

The Court found in *Plyler* that the Equal Protection Clause applies to non-citizens as it does to citizens, and the Court held that neither the state nor a school district could deny students equal access to a public education based on their immigration status. Indeed, the Court found that a denial of students' access to public elementary and secondary education "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status....By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation."

¹ This information is provided as a resource for educators. Based on current law, it does not constitute specific legal advice, nor does it predict outcomes in relevant court cases or administrative actions that may follow. Legal counsel should be consulted to address specific legal questions and relevant compliance concerns.

² 457 U.S. 202 (1982).

Therefore, states and districts must continue to ensure that undocumented students in their jurisdiction have full and equal access to K-12 public schools. This obligation likely prohibits taking action that creates impediments or a chilling effect on student enrollment or participation in public schools, such as requests for information on a student's or family's immigration status. In fact, the United States Court of Appeals for the Eleventh Circuit in 2012 prohibited enforcement of an Alabama statute that required enrolling students to verify their citizenship and immigration status.³

Other federal laws underscore these established constitutional rights. For example:

Title VI of the Civil Rights Act of 1964 prohibits discrimination by recipients of Federal financial assistance, which includes States and districts, on the basis of race, color, or national origin. Further, Title VI regulations are clear that states and districts may not, absent a non-discriminatory justification, take actions that have the effect of impeding rights – in this case equal access to public education – based on race, color or national origin.

The *McKinney-Vento Act* provides education rights to students experiencing homelessness, including unaccompanied youth, regardless of their immigration status. McKinney provides these youth with the right to enroll in school immediately and without documentation; the right to attend their school of origin even if a temporary living situation is in another school district, including the right to transportation; and the right to attend school without legal guardian or guardianship documents.

Conclusion

Any attempted changes to the DACA program cannot undermine the existing constitutional rights of undocumented students to attend K-12 public schools, free of impediment and harassment.

States and districts can work with law enforcement to ensure that schools and related sites remain appropriately separate and apart from immigration enforcement. The Department of Homeland Security, which governs Immigration and Customs Enforcement (ICE), has determined that immigration enforcement actions, including arrests, interviews, searches and surveillance, should not take place at “sensitive locations,” which include schools.⁴

EducationCounsel is a mission-based education consulting firm that combines significant experience in policy, strategy, law and advocacy to drive improvements in the U.S. education system.

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³ *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

⁴ <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>