PROTECTING IMMIGRANT STUDENTS' RIGHTS TO A PUBLIC EDUCATION

A Guide for Advocates

SPLC Southern Poverty Law Center

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The Southern Poverty Law Center (SPLC) is a nonprofit civil rights organization founded in 1971 to combat discrimination through litigation, education, and advocacy. The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

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INTRODUCTION

Access to public education is critical for all children in the United States to learn, grow, and thrive, and is fundamental to maintaining our democracy and civil society. Thirty-nine years ago, the United States Supreme Court, in its landmark *Plyler v. Doe* decision – which upheld the right of all children to enroll in and attend public school, regardless of immigration status – emphasized that "education has a fundamental role in maintaining the fabric of our society."[1]

The *Plyler* Court stated, "[w]e cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."[2] This decision echoed and amplified the Supreme Court's watershed civil rights ruling decades earlier, *Brown v. Board of Education,* in which the Court recognized: "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."[3]

Despite their well-established legal right to access education, immigrant students, the children of immigrants, and English Learners (ELs) continue to face barriers that block access to public education. In some cases, schools deny enrollment to these students outright. More commonly, schools impose documentation requirements that result in the "chilling" – i.e., discouragement or effective denial – of these students' enrollment.

In the past decade, state and local governments have attacked the rights of immigrants and their families through laws designed to burden their everyday lives – most infamously, Arizona's SB 1070 and Alabama's HB 56. Among other features, Alabama's law explicitly targeted the rights of immigrant children to a public education. Unfortunately, attacks on immigrant students' access to education may continue – despite widespread public recognition that access to public schools is not only lawfully required, compassionate, and fair, but also wise as a matter of public policy. As the Supreme Court reminded us more than three decades ago, education "provides the basic tools by which individuals might lead economically productive lives to the benefit of us all."[4]

This manual is designed to give families and other advocates basic tools to promote access to public education for all students, regardless of their background. Its goal is to enforce and promote the right to a free public education under *Plyler* and other relevant federal

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laws, including the McKinney-Vento Homeless Assistance Act.[5] The manual also seeks to explain students' and families' rights in educational settings in a clear and accessible manner.[6] Neither its contents nor its dissemination constitutes legal advice. We strongly recommend that families and other advocates reach out to organizations that have experience litigating education cases before bringing any legal action.

In the sections that follow, we address:

Students' and families' rights:

- Students' rights to enroll in public school under *Plyler v. Doe*, exploring the legal framework for immigrant and EL students' rights and the rights of immigrant, EL, and limited English proficient (LEP) parents and guardians, including the programs and services that schools must provide to students and their caregivers.
- Other legal protections that may apply to EL and immigrant students (including the McKinney-Vento Homeless Assistance Act).

Enrollment details, including:

- An overview of the laws governing enrollment, mandatory attendance, and tuition.
- Practical knowledge for enrolling immigrant and EL students (with checklists of which documents school districts can and cannot request).
- Practical steps for enrolling immigrant and EL students (where to look for information, who can help, and more).

Advocacy resources, including:

- A sample letter to a school district identifying problematic policies, and suggestions on how to remedy them;
- Links to key federal guidance documents.

THE PRESUMPTION OF INCLUSION

Public schools have segregated or attempted to segregate many different populations of vulnerable students over the years. As recently as 1954, Black students were legally segregated from white students. The Supreme Court ended legally sanctioned racial segregation in public education in *Brown v. Board of Education*.[7] Many schools did not immediately desegregate following the Court's order in *Brown* and subsequent related orders.[8] Brave students, families and other advocates had to demand the equal educational access that *Brown* legally required. To this day, the Court's decision ending legally permissible segregation continues to affect education law and policy, and challenges to equal educational access still remain.

Nearly all federal law on segregation in education contains a presumption of inclusion. Separate and distinct from the racial desegregation obligation rooted in the Fourteenth Amendment to the Constitution and that flows from *Brown* and its progeny, school districts also have to take measures under various federal laws to include students with disabilities, students experiencing homelessness, and ELs.

For students with disabilities, all federal laws protecting their rights – including the Individuals with Disabilities Education Act (IDEA),[9] Section 504 of the Rehabilitation Act of 1973,[10] and Title II of the Americans with Disabilities Act[11] – presume that students will be included in the regular public school environment, along with their non-disabled peers. Although the language of each statute differs slightly,[12] their overlapping protections presume (with some exceptions) that the appropriate place to educate students with disabilities is in regular public school settings alongside their non-disabled peers.[13]

For students experiencing homelessness, the section below provides a detailed explanation of who qualifies as homeless and the special protections in federal law for those students. In addition to those substantive protections, it is important to note that the McKinney-Vento Homeless Assistance Act expressly prohibits segregating students experiencing homelessness: These students cannot be relegated to shelter classrooms, separate schools, or separate programs within schools for any period of time because of their homelessness.[14] The legal exception to this prohibition allows districts to provide separate services for a limited period of time, if that is necessary for "health and safety" emer-

It is crucial for students — whether they are students with disabilities, students experiencing homelessness, or ELs — to be able to interact with a diverse group of peers.

gencies.[15] Such emergencies are the exception, not the rule.

A similar presumption of inclusion applies to ELs.[16] Federal law and policy require that school districts educate ELs in the regular public school environment, in the least segregated manner possible.[17] Yet in spite of these protections, some school districts continue to engage in practices that have the purpose and/or effect of unnecessarily segregating EL students (detailed below with regard to students with limited or interrupted formal education). These practices are not only legally prohibited, but also profoundly harmful to the affected students.

Overall, it is important to remember that integration serves all students. It is crucial for students – whether they are students with disabilities, students experiencing homelessness, or ELs – to be able to interact with a diverse group of peers. Such integration vastly increases ELs' exposure to spoken English, and helps them develop fluency and linguistic skills more quickly. For the other students, integration strongly promotes academic, social, and emotional growth and success.[18] As the Supreme Court held years ago, the skills that students need for success in "today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."[19]

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LEGAL FRAMEWORK GOVERNING THE RIGHTS OF IMMIGRANT AND EL STUDENTS TO ENROLL AND PARTICIPATE EQUALLY IN PUBLIC SCHOOL

Plyler v. Doe

In *Plyler*, the Supreme Court struck down a Texas law that excluded undocumented immigrant children from free public school. That law withheld any state funds from local school districts that were designated for the education of children who were not "legally admitted" into the United States. It also allowed school districts to deny public school admission to undocumented immigrants.[20] As a result, Texas school districts began charging tuition to undocumented students. A group of undocumented Mexican children and their parents sued, challenging their exclusion from public school.

The Supreme Court held that the Texas law violated the Equal Protection Clause of the Fourteenth Amendment. First, it affirmed that undocumented immigrants are protected by the Fourteenth Amendment's guarantee of equal protection, rejecting Texas' argument to the contrary.[21] The Court then discussed the particular importance of public education to both the individual child's development and our society as a whole. Considering the Texas law's "cost to the Nation and to the innocent children who are its victims," the Court held, the law could not be upheld unless it "further[ed] some substantial goal of the state."

Texas argued that the students' undocumented status alone justified their exclusion from public school. The Supreme Court rejected this argument. Texas then claimed that preserving state resources for citizens and lawfully present noncitizens sufficiently supported the law. The Court dismissed the argument that charging tuition effectively discouraged undocumented immigration to Texas. Nor was the Court convinced that barring undocumented immigrants from public school would improve the quality of public education. Finally, the Court noted that there was no evidence that undocumented children were less likely to remain in the state than other children after their public school education was complete. Because the Texas law denied a public education to a "discrete group of innocent children" and did not further a "substantial state interest," the law violated the Equal Protection Clause.[22]

The *Plyler* decision was a watershed for the rights of immigrant children to participate in public education. Since that decision 39 years ago, states and municipalities have attempted to keep immigrant students out of public schools through both formal measures and informal practices. For

instance, in 2011, Alabama took drastic steps to discourage immigrant children and the children of immigrants from enrolling in public school. The state passed a comprehensive anti-immigrant law, HB 56. That law included a provision requiring all Alabama public elementary and secondary schools to determine, upon enrollment, whether the enrolling child was born outside of the United States, *and* whether the parents of the child were not lawfully present in the United States.[23] It also required school officials to inquire about the student's citizenship and immigration status, and to collect and report data to the state on the immigration status of enrolling students.[24]

The law had an immediate chilling effect on Alabama's immigrant students and their families: In the days after the law went into effect, approximately five percent of the state's Latinx student population were absent from school statewide.[25] Although a federal appeals court ultimately struck down this section of HB 56 as unconstitutional under *Plyler*,[26] the law inflicted immense damage on immigrant families and communities, particularly in the public school setting.[27]

Unfortunately, efforts to restrict immigrants' access to public education did not end with the demise of Alabama's discriminatory law. Advocates and parents report that a number of practices – including onerous documentation and registration requirements that deter or bar immigrants from enrolling their children in school – continue throughout the country. For example, certain paperwork may be difficult or impossible for undocumented immigrants to obtain. If schools deny students enrollment because their parents cannot provide such documents, the school district may be in violation of *Plyler* (see the section below on enrollment for additional details on permissible enrollment practices). Certain subgroups of immigrant students, particularly older EL youth, face additional barriers in accessing public education through practices that push them out to adult education and other alternative programs, even when they are eligible to enroll in high school like any other student. A number of legal protections are available to push back against the exclusion of immigrant students and the children of immigrants from public schools. They are detailed below.

Federal Laws Protecting English Learner Students, Parents and Guardians[28]

Beyond the equal protection guarantee embodied in *Plyler*, additional federal laws protect the rights of immigrant and EL students to public education. Of course, not all immigrant students are ELs, and not all ELs are immigrants. But there is an overlap between these two groups. Under federal law, EL students have the right to equal access – and meaningful participation in – educational programs and services in public schools. In practice, this means that school districts and state education agencies must take affirmative steps to address EL students' language barriers and ensure equal access to educational programs.[29]

The two federal laws that most directly impact EL students' rights to equal access to public education are: (1) the Equal Educational Opportunities Act (EEOA) of 1974 and (2) Title VI of the Civil Rights Act of 1964.[30] These laws are important tools to advocate for the rights of students who are not fluent in English so that they receive equal access to public school programs, assistance in developing English-language skills, and access to interpretation and translation services. These same laws also protect the rights of Limited English Proficient (LEP) parents and guardians[31] – and parents and guardians of EL students – to access information and participate in their children's education in a language-accessible manner.

The EEOA requires public school districts and state education agencies to take "appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs."[32] This law codified the Supreme Court's landmark 1974 decision in *Lau v. Nichols*.[33] The *Lau* decision addressed the failure of the San Francisco public school system to provide language assistance to some of its Chinese-speaking students. In *Lau*, the Supreme Court held that:

> *[b]asic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.*[34]

Courts have held that to pass muster under the EEOA, a school's plan for EL students must: (1) be based on a sound educational theory that is (2) implemented effectively and (3) produces results indicating that language barriers are actually being overcome.[35]

Title VI of the Civil Rights Act – which prohibits discrimination based on national origin, among other categories – requires public schools and state education agencies to take "affirmative steps" to address language barriers, so that EL students can participate meaningfully in public school programs.[36] Discrimination based on English-language proficiency – including a failure to provide services to ELs and their parents – can constitute national origin discrimination under Title VI.[37]

Based on these federal laws, school districts must take a number of steps to comply with their obligations to EL students and their parents.[38] What follows is a short summary of some of those key steps:

First, school districts must properly identify ELs to determine which students (newly enrolling or already enrolled) may be eligible for language assistance services. Identification is usually done at the time of enrollment through a tool called a "Home Language Survey," which asks about the student's first (sometimes called "primary") language and the language(s) spoken in the home.[39] Once the district identifies a potential EL student, it must assess the student's English-language proficiency in four "domains" — reading, writing, speaking, and listening — to determine the appropriate placement level in the EL program (proficiency levels typically range from "newcomer" to "advanced").[40] Scores in each of these "domains" determine an EL's placement "level" (levels correspond to proficiency, usually with Level 1 representing the lowest level of proficiency). "Levels" are *only* for EL services, though – a student may score at a low English proficiency level, but that does not mean the school district can assign an EL student to an age-inappropriate grade level for non-EL services.

Second, school districts must provide language assistance services to students identified as ELs.[41] EL programs must be designed and implemented to enable EL students to achieve both English-language proficiency and parity of participation in the regular instructional program within a reasonable amount of time.[42] In other words, schools cannot limit ELs to only learning English-language skills and entirely neglect their substantive academic education. EL students must, as much as possible, have access to the core curriculum (such as math, science, social studies, and language arts) while they are developing their English-language proficiency. Even if districts temporarily emphasize English-language acquisition, they cannot do so to the total exclusion of core academic content, and they must still remedy students' deficits in

other curricular areas within a reasonable amount of time.[43] Finally, they must also monitor EL students' progress in curricular content areas during the time the students are learning English.[44]

Third, school districts must dedicate appropriate staff and resources to implement their EL programs effectively. This includes hiring a sufficient number of qualified ESL teachers,[45] and ensuring that they receive sufficient training.[46]

Fourth, school districts must monitor the progress of EL students in attaining both English-language proficiency and academic content knowledge.[47] Part of monitoring progress includes regularly assessing how well ELs are progressing in achieving English-language proficiency. Once ELs achieve such proficiency, school districts must then remove students from the EL program.

Fifth, school districts must avoid unnecessary segregation of EL students. In cases where EL students receive some instruction separate from their non-EL peers to develop their English language skills, districts must minimize the amount of time that EL students are educated separately.[48] For example, in non-core academic subjects, such as music, art, and physical education, EL students should be in classes with their English-proficient peers.

Sixth, EL students should be assessed like their non-EL peers for special education and other disability-related services.[49] This can be especially important and especially tricky with respect to ELs, because it takes expert professionals to determine whether a student's academic or behavioral challenges are the result of language barriers, disability, or both. School districts cannot have a policy of "no dual services" (i.e., allowing students only to receive EL services or disability-related services, but not both). Dual-identified EL students with disabilities have federal rights entitling them to both types of services.[50]

In addition to the rights of EL students, LEP parents and guardians — whether or not their children are ELs — have independent rights to meaningfully communicate with their chil-

Steps school districts must take to comply with their obligations to EL students and their parents.

1. Properly identify ELs to determine which students may be eligible for language assistance service
2. Provide language assistance services to students identified as ELs.
3. Dedicate appropriate staff and resources to implement their EL programs effectively.
4. Monitor the progress of EL students in attaining both English-language proficiency and academic content knowledge.
5. Avoid unnecessary segregation of EL students.
6. Assess EL students like their non-EL peers for special education and other disability-related services

dren's schools. This means that school districts must ensure that educators and school staff communicate with LEP parents and guardians in a language they can understand, and that they notify LEP parents and guardians of any program, service, or activity communicated to English-speaking families, "to the extent practicable."[51] These LEP communications obligations arise from Title VI and the EEOA.

To help parents, school districts should translate documents containing "essential information," including, but not limited to:

- Documents related to public health or safety
- Instructional continuity plans during school closures
- Information about school closures and re-openings
- Registration and enrollment documents/ Home Language Survey
- Handbooks/disciplinary policies
- Disciplinary notices
- Information about special education or other disability-related services
- Testing accommodations
- Report cards/other academic performance notices
- Parent/guardian permission forms
- Grievance procedures
- Bullying notices
- Non-discrimination notices
- Information about extracurricular activities
- Information about parent-teacher conferences and open houses

It is not the parents'/ guardians' responsibility to find an intrepreter. Schools should provide interpretation services from qualified interpreters.

School districts should also provide interpretation services in setting included, but not limited to:

- Registration and enrollment
- Counseling on eligibility for EL services
- Orientation/back-to-school events
- Parent-teacher conferences
- Medical or public emergencies/nurse calls
- Schoolwide announcements over intercom or in meetings
- Special education-related meetings
- Counseling and other student services
- Disciplinary hearings
- Testing accommodations
- Extracurricular activities

It it not the parents'/guardians' responsibility to find an interpreter. Schools should provide interpretation services from qualified interpreters, who can either be school district personnel or contractors from outside interpretation services. In either case, the interpreter should be fully proficient in both languages and trained as an interpreter – including in the use of technical vocabulary in a school setting and the ethics of interpretation.[52] Districts should not rely on staff who happen to speak more than one language, but are not trained as interpreters. Further, the following people are not appropriate interpreters: unofficial volunteers, bilingual friends and family, other students, or the students themselves. Similarly, qualified professionals (either school staff or from an outside company) should translate written materials. Internet translation services are often inadequate to convey accurate meaning, and schools should not rely on such resources. Similarly, it is inappropriate for any of the people listed above (volunteers, students, etc.) to translate documents, unless they are trained in translation, and have mastery of the technical vocabulary necessary for such projects.

If a district fails to comply with the requirements listed above, it may, at a minimum, be

violating the EEOA or Title VI.[53] Both statutes allow affected individuals to bring lawsuits in federal court or to file administrative complaints with the federal government. We recommend consulting with an experienced attorney to determine whether an individual has a claim under the EEOA and/or Title VI.

Additional Protections for Some Immigrant Students: the McKinney-Vento Homeless Assistance Act

Public school students (whether immigrants or otherwise) who are experiencing "homelessness" – as defined in federal law – have strong and special rights to enroll in public elementary and secondary school. These rights flow from the McKinney-Vento Homeless Assistance Act ("McKinney-Vento").[54] The statute defines "homelessness" in broad terms that go beyond commonly held notions of who is "homeless," making this law widely applicable to children and families living in unstable conditions or in poverty. McKinney-Vento is an important tool for advocates to navigate the school enrollment process on behalf of immigrant children or citizen children living in mixed-status families.

For those immigrant students who qualify, the McKinney-Vento Homeless Assistance Act can provide crucial protections that overlap with those provided by *Plyler v. Doe*.

Under federal law, children are considered "homeless" if their living situation falls into any of the following categories:[55]

- Sharing the housing of other persons due to loss of housing, economic hardship, or other similar reasons (i.e., families are "doubled up")
- Living in motels, hotels, or campgrounds due to lack of alternative adequate accommodations
- Living in emergency or transitional shelters
- Abandoned in hospitals
- Going to a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings
- Living in cars, parks, public spaces, abandoned buildings, bus or train stations, substandard housing, or similar settings

Under McKinney-Vento, a family living in an apartment, rental housing, or mobile home community may be considered "homeless," depending on the circumstances. So would a child or family temporarily living with relatives while looking for their own housing. Although there is no single definition of "substandard housing," the U.S. Department of Education has advised that the term generally refers to housing that lacks one or more fundamental utilities (e.g., water or electricity); that is infested with vermin or mold; that lacks a basic functional component such as a working kitchen or toilet; or that may present unreasonable dangers to adults or children.[56]

McKinney-Vento's broad definition therefore likely includes many families that would not self-identify as homeless. There may be stigma or concern surrounding the term "homeless," so although advocates can and should use strong education protections (see below) to help children and families, it is also important to be aware of the effect that the categorization might have. Some advocates simply use the term "McKinney-Vento students," as it is less likely to cause distress.

School districts' obligations are clear and straightforward under McKinney-Vento: If a student qualifies as homeless, the school must immediately enroll the student, even if the student cannot produce the kinds of records and paperwork typically required to enroll. It does not matter if McKinney-Vento students cannot produce application forms, fees, prior school records, documentation of immunization, proof of residency, proof of age, a school uniform, or anything else a school might ask of a non-McKinney-Vento student upon enrollment.[57] The school district must enroll the student, and then help the student and their family obtain the relevant documentation.

The law's strong, broad presumption of enrollment is premised on a simple notion: We cannot expect children and families experiencing homelessness to have access to the kinds of records that children and families who are not homeless can easily obtain. If a family is living in an employer provided home, they may not have utility bills, a lease, or other documents that a renter or owner might have. And if a family recently arrived as refugees, for example, they may not have paperwork from their previous lives in another country.

The school district can, of course, dispute whether the child is actually experiencing homelessness under McKinney-Vento – and therefore whether they can be enrolled – but such disputes must happen after the child is enrolled, and must use the McKinney-Vento Dispute Resolution process.[58]

School districts must do more than simply enroll students experiencing homelessness. They must designate a McKinney-Vento "liaison," whose job includes enrolling eligible students for status-related benefits (free/reduced meals, Medicaid, etc.),[59] helping families access clothes or school uniforms, and getting children access to needed medical care such as immunizations.[60] Also, school districts must provide students experiencing homelessness with transportation to and from school – even if the family has to move from one living space to another within the district, and even if the district does not provide transportation to students not experiencing homelessness.[61]

In Practice:

- Advocates should identify and involve the school district's McKinney-Vento liaison. That person can help connect students to resources, and assist with the informal resolution of any problems. The McKinney-Vento liaison is typically the most knowledgeable individual in the district about the rights of students and families experiencing homelessness.
- If advocates seek out the local liaison and that person (a) does not exist or (b) is not helpful, each state has its own department of education "McKinney-Vento state coordinator" who should respond to concerns. Advocates can also use the district or state-established dispute resolution procedures to make a complaint to the state coordinator.[62]
- Private plaintiffs can file complaints in court under the statute.[63]

Protecting the Privacy of Students' Personal Information: FERPA

The most important thing for families to remember is that school districts are supposed to keep the information shared with them confidential and generally cannot disclose information such as names, addresses, or citizenship status to external law enforcement without good reason, such as an "articulable and significant threat."[64]

The Family Educational Rights and Privacy Act (FERPA)[65] protects students' personal information (called "personally identifiable information," or PII) by controlling who has access to that information, when it can be shared, and with whom. FERPA applies to both K-12 and post-secondary students. When a child is under 18, the parents or guardians are the "holders" of the FERPA rights, and the child is called an "eligible child." Once a child turns 18, they become entitled to those FERPA rights.

PII is a fairly broad category, including a student's name, parent(s)/family names, address, personal identifiers such as a Social Security number, and other information that alone or in combination would be linkable to that specific student by a reasonable person in the school community.[66] Although this information is usually protected, sometimes certain categories of information (e.g., name, address, telephone number, date and place of birth, participation in officially recognized activities

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and sports) can be designated as "directory information."[67] If the school considers a category of information to be "directory information," it can disclose that information publicly without asking the parent or child. However, schools must tell families which information they want to consider "directory information," and families can ask to keep that information private instead.[68]

PII is generally stored in a category of documents called "education records" (i.e., grades, transcripts, course schedules, and disability-related records such as Individualized Educational Programs (IEPs)[69] or 504 Plans[70]). FERPA limits who can access those education records. However, "school officials" (e.g., teachers, administrators, nurses)[71] with "legitimate educational interests" (i.e., if they need to review those records in order to fulfill their professional responsibilities)[72] can access that information.

ENROLLMENT: THE DETAILS

The following subsections explain the ins and outs of school enrollment – the laws concerning who must enroll and be enrolled, the collateral consequences (and benefits) of those mandatory attendance laws, and how enrollment actually functions in practice.

Mandatory Attendance Laws and Their Impact on Enrollment

Overview

Every state in the country has laws requiring children to be enrolled in school. These requirements start at some state-determined minimum age (between 5 and 7 years old, depending on the state) and end at a maximum age (between 16 and 22 years old, depending on the state).[73] Most states have some religious exemptions from their mandatory attendance laws, but most parents and guardians should assume that mandatory attendance laws apply to them and their children.[74]

The Importance of Following Mandatory Attendance Laws

Most states impose legal consequences on children who are not enrolled and/or not attending school. States also often impose consequences on their parents or guardians, premised on the idea that the parents or guardians are partially or fully at fault for failing to properly supervise their children and ensure their daily attendance at school. Although specific consequences differ by state, there are some consistent trends. First, children who fail to enroll in and attend school are usually considered "truant," and state laws often mandate that school districts report truant children to local law enforcement. This practice exposes those students deemed truant to local law enforcement, as well as refers them to the local juvenile justice system. In addition, state laws often allow for criminal prosecution of parents whose children are truant.

Thus, for all students and families, school enrollment is not just educationally beneficial but can also protect undocumented students or documented students in mixed-status families. Enrollment and attendance can also protect students and parents from unnecessary exposure to the justice system, which itself could lead to immigration consequences for the student and/or parent/guardian.

Advocacy Tool: "Permissive" Attendance Laws

Over 40 states have a separate category of attendance laws that set a maximum age for a student to attend K-12 school. That maximum age is typically between 19 and 21. These "permissive" attendance laws are key tools for students, whether immigrants or otherwise, who are older than their peers in a particular grade, and who are therefore not on track to graduate by the traditional age of 18. The fact that some students will not graduate with their peer cohorts is legally irrelevant – they are still allowed to enroll in and attend school up through the end of the state's permissive attendance age limit.

Permissive and mandatory attendance laws serve different functions. The mandatory age range is primarily tied to truancy laws and parental consequences, among other things (see the previous section about mandatory

attendance laws). But *permissive* attendance laws can be a useful advocacy tool, especially when older immigrant or EL children are "advised" out of their educational rights and into non-public or non-regular school alternative programs (see Special Note below). This is particularly important for those in the category of "students with limited or interrupted formal education," abbreviated as "SLIFE,"[75] as permissive attendance laws allow them to enroll if they are under the maximum age of enrollment, regardless of whether they plan to graduate on time or at all.

SPECIAL NOTE

Enrollment of Older Adolescent ELs and Students with Interrupted Formal Education

Recent lawsuits and media reports have highlighted the practice of school districts funneling some immigrant and/or EL students – particularly older adolescents – into substandard educational programs, including non-credit-bearing adult education programs and other programs that do not offer high school credit and/or diplomas.[76] Immigrant and refugee students who have recently arrived in the United States, as well as "SLIFE" students, are particularly vulnerable to such practices. Although such students may present new challenges for educators, they are entitled to equal access to educational opportunity, just like their English-fluent and U.S.-citizen peers. Exclusion from regular public school denies students their full academic and career potential, and likely violates federal law.

In some cases, school districts deny high school enrollment to older immigrant and/or EL students outright. In other instances, districts steer such students to alternative programs, such as "credit recovery" programs, Adult ESOL, GED, and career or vocational programs. In any of these situations, when the students and their parents do not make a knowing and voluntary choice to forgo a regular high school program, advocates say exclusion from a regular public school may violate state and federal law.[77]

Recent lawsuits have challenged such practices.[78] A federal appeals court held that Pennsylvania's Lancaster School District violated the EEOA by sending newly arrived EL refugee students to an inferior, privately operated school for students with behavioral issues, and denying them enrollment in the regular public high school.[79] That case resulted in a favorable settlement with the school district and reaffirmed school districts' obligations under the EEOA. A similar case in Utica, New York, also resulted in a favorable settlement, with the district being required to enroll the wrongly excluded students and make additional policy changes.[80] The SPLC sued the Collier County School Board in Florida, challenging its policy of excluding large numbers of recently arrived, foreign-born EL students from public school.[81] That case has now settled.

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The Right to Enroll

As the sections above have described, public elementary and secondary schools must register and enroll every child who lives[82] in their geographic boundaries, regardless of the child's citizenship or immigration status, or the parents' or guardians' citizenship or immigration status.[83] This requirement is based on obligations from various federal laws, including the Equal Protection Clause of the Fourteenth Amendment to the Constitution, Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act.

This means that, in the process of enrolling a student in public school, school districts engage in prohibited discrimination if they demand documents that are categorically unavailable to non-U.S. citizens. Note that this includes requesting documents from students or their parents.

In practice, this means that public schools cannot demand the kinds of documents that undocumented children or families cannot access, such as Social Security numbers,[84] U.S. state-issued driver's licenses, state-issued photo I.D., proof of Medicaid or other public health program enrollment, voter registration, vehicle registration, or evidence of a bank account.[85]

A key caveat: Although school districts cannot require that students or parents provide the kinds of documents that are wholly inaccessible to undocumented students and families, it is alright for school districts to ask for those documents, if they also clearly indicate that providing such documents is optional. As an example, some school districts or states ask for students' Social Security numbers, seeking to use them as the default for each student's unique identification number.[86] Schools can indeed ask for Social Security numbers, but they must also allow students to refuse to provide that information, either because they don't have it or because they simply don't want to provide it.[87] If school districts ask for such information, they need to clearly state that providing it is optional, and they cannot impose penalties or consequences because a student or parent chooses not to provide it.[88]

Although it is not technically a form of segregation, impermissibly charging tuition has often been used as a tool to exclude students, especially immigrant students, from public schools. This practice is illegal, and has been for many years.

Federal law prohibits charging any district student tuition to attend public school.[89] The Supreme Court has explicitly addressed the practice of charging tuition for undocumented and immigrant students. In fact, charging tuition is the subject of key facts underlying *Plyler* v. Doe,[90] as noted above, but schools and states have tried to do just that many times. It will take vigilance from advocates, and the

use of federal and state law,[91] to protect students, especially those who are immigrants and undocumented, from being excluded in this manner.

Many schools and districts do charge all students what should only amount to small fees for various components of their educational programs (participation in elective courses, extracurricular activities, etc.). Whether these fees are legal depends on how much they are, whether there are exceptions, and other factors. But no matter what, immigrant and undocumented students cannot be singled out and charged any fees or tuition for their public education that are not also charged to students who are U.S. citizens.

Practical Knowledge for Immigrants and ELs

What follows is general information about which kinds of documents school districts can and cannot require for students to enroll in public elementary and secondary school. No matter what, it is important to remember that document requirements are an important place where rights outlined by *Plyler* and McKinney-Vento overlap. That is, there may be multiple reasons why a student or parent cannot provide a document. For instance, a student or parent may not be able to or want to provide the student's birth certificate for multiple reasons, some of which may be related to immigration, and others may be related to homelessness. A parent or guardian may not be able, for instance, to provide a birth certificate because it is with the child's relatives in another country – or because the family is experiencing homelessness and does not have a copy of the document with them where they are living. Either reason is a valid one not to provide that document, and a school must accept either explanation.

Additionally, multiple subsections below reference parental affidavits. If school districts want parents to provide sworn, notarized affidavits, then schools should make their best efforts to avoid requiring families to spend money on them. Schools can do this by ensuring that they have a notary on staff or by providing parents with financial assistance to cover the costs of notarizing a document.

Which Documents Can School Districts Request?

PROOF OF AGE

Public schools can ask about a student's age and birth date. This information is important and helpful for schools to see if the child falls within the minimum and maximum age requirements for attending public schools in that state, and to assign the student to an appropriate grade level.

However, public schools must allow undocumented and immigrant students and parents to demonstrate a student's age using a variety of relevant documents. Schools should accept any of the following documents:[92]

- Birth certificate (U.S. or non-U.S.)
- International driver's license (for students old enough to drive)
- Passport (U.S. or non-U.S.)
- Religious documentation of birth (e.g., baptism or bris certificate; entry in a family Bible)
- Hospital or other medical record of birth
- Adoption records (U.S. or non-U.S.)
- Previously verified school records (U.S. or non-U.S.)
- Immigration document (e.g., Office of Refugee Resettlement documents)[93]
- Parental or guardian affidavit

PROOF OF RESIDENCY

Public schools can ask for a student's proof of residency. This information is important and helpful for schools to determine whether the child lives within the district's boundaries.[94] Note that some districts under ongoing desegregation orders have stringent requirements for proving residency – this is typically to prevent "zone jumping" within the context of that court

order, and is not intended to keep out undocumented or immigrant students or families.

However, even a school district under a desegregation order must comply with *Plyler* and McKinney-Vento. Public schools also must allow undocumented and immigrant students and parents to demonstrate a student's residency using a variety of documents. Schools should accept any of the following documents:[95]

- Telephone bill (cell or landline)
- Utility bill
- Internet bill
- Mortgage document
- Lease or sublease document
- Rent payment receipt
- Money order made for rent payment
- Employer letter
- Immigration document (e.g., Office of Refugee Resettlement documents) [96]
- Parental or guardian affidavit

PROOF OF LEGAL RELATIONSHIP

Public schools can ask for some evidence of a student's legal relationship to the adult who enrolls him or her in school. This information is important. It helps schools comply with various state and federal laws and policies about communicating information concerning minors only to adults who have legally recognized relationships with them. For instance, under the federal Family Education Rights and Privacy Act (FERPA), students' education records are only accessible to a student's "parent." Under FERPA regulations, a "parent" includes: "natural parents, a guardian, or an individual acting as a parent in the absence of a parent or a guardian."[97] Schools must have a means of determining whether the adult who enrolls the child has a legal relationship to the child, for FERPA and many other reasons.

If the adult enrolling the child is not the child's parent, the adult should be prepared to present documentation of their status as a legal guardian, or should be accompanied by a parent or legal guardian.[98] For parents who share custody of a child, districts may also request copies of custody orders to verify the legal custody arrangement. This may seem intrusive, but it is necessary to comply with family court orders and to protect students' safety.[99] For more complicated domestic situations where the legal custody doesn't align with the child's daily living situation, parents should take steps to ensure that students have an appropriate adult appointed as the legal guardian who can make educational decisions on their behalf.

Schools should accept any of the following documents to prove a legal relationship with the child:

- Parent ID document of any kind, such as an international driver's license, *matricula consular* (Mexican consular identification card), parent birth certificate, etc., with a last name that matches the student's last name
- Legal guardianship documents (e.g., adoption records, foster care documentation, etc.)
- Court orders
- Immigration document (e.g., Office of Refugee Resettlement documents)

IMMUNIZATION

Public schools can ask about a student's immunizations. This information is important and helpful for public health reasons and to ensure student safety. It is usually required in some fashion by state law. Most states do set a minimum requirement, mandating that all students have certain immunizations to enroll in public school.

However, this rule always has some exceptions. First, school districts *cannot* prevent students protected by the McKinney-Vento Act from enrolling because they lack necessary immunizations; instead, districts must "immediately refer" the student to the McKinney-Vento liaison described in the section of this manual about the McKinney-Vento Act, who "shall assist in obtaining necessary

immunizations or screenings, or immunization or other required health records"[100] For students who are not McKinney-Vento eligible, many states have laws providing exceptions to immunization requirements for religious or other personal beliefs. And most states have reasonable laws allowing children to enroll if they present some evidence that they are in the process of being immunized.[101] It is easy to understand the logic behind the in-progress immunizations laws: Some immunizations must be separated by days, weeks, or months, and schools cannot demand that students change medical processes to fit the school-year calendar.

No matter what, advocates should be prepared to counsel students on getting proper immunizations to enroll in public school.

TITLE III-RELATED QUESTIONS ABOUT NATIONAL ORIGIN

Public schools *can* ask about a student's place of birth and the amount of time the student has been in the United States, if those questions are intended to give the school district necessary information under Title I, Part C and Title III of the Every Student Succeeds Act.[102] Responding to these questions is *optional*, and their sole purpose is to determine whether the school can receive federal (and, sometimes, related state) funding for immigrant and/or EL students.[103]

Even a school district under a desegregation order must comply with *Plyler* and McKinney-Vento.

Practical Steps for Enrolling ELs: When?, Who?, Where?, How?

When to Enroll

Most school districts set aside time and resources in a central location, such as the district office, to facilitate enrollment, though some school districts direct families to enroll at their local school site. Regardless, students and parents or guardians are allowed to enroll throughout the school year. Families change schools and districts for many reasons during the course of the year, so schools must constantly be open to accepting new students.[104]

Who Can Help

Schools and districts employ a number of people who can and should help families enroll. This list of helpers includes, but is not limited to:

- **Secretary, administrative assistant, front desk staff.** These are the people on the front lines of enrollment. They are typically the first people a family will meet when entering their a new school. Sometimes they have language skills to help enrolling EL students or LEP parents directly. Other times, they do not have those skills, but should have access to either in-house language resources (e.g., a bilingual paraprofessional) or an outside resource such as a "language line."

- **McKinney-Vento liaison**. See the section in this manual about the McKinney-Vento Act. This person should be a strong advocate for any student protected under the McKinney-Vento act. The McKinney-Vento liaison is typically the most knowledgeable person in the district about the rights of homeless students and families.

- **Title III coordinator.** This person is in charge of ensuring that EL students and LEP parents have access to federally mandated services and supports.

- **School counselor.** Not all schools have counselors, but for those that do, this person is often a helpful resource for navigating enrollment and other challenges.

- **Special education coordinator.** For any student with a disability or whose parent believes they may have a disability (anything

from needing a hearing aid to having autism spectrum disorder), the school or district special education coordinator should be able to help the parent or guardian navigate the enrollment process, and help the student get connected with disability-related services.

Where to Find Information

Most school districts provide direct links to information about school enrollment on their websites. Many individual schools do, too. The information will likely include a list of documents required for enrollment, enrollment forms, and possibly information on district employees whom advocates can contact directly for enrollment information.

The school district should also maintain a handbook of district policies that should be available on the website, as well as upon request via phone or in person at the district's central office. The district's enrollment policies should be included in that handbook, as well.

To identify staff members who may be helpful or a necessary contact during the enrollment process, advocates can also consult a staff directory on a school district's website, or can search for listings of the district's various departments or programs to identify relevant staff. Advocates can also call the school district's central office for assistance with identifying staff.

How to Push Back When Encountering Obstacles

A school district's enrollment information may not align with legal requirements, as explained in this handbook. When this occurs – and students are denied or deterred from enrollment – students, families, and advocates should consider the following general guidance:

1. Advocates should be prepared in advance to explain why the family seeking enrollment does not have to comply with the unlawful requirement. Sometimes, asserting the family's *Plyler* rights is enough to stop a district employee from enforcing bad policy.

2. If the school district employee insists on enforcing an illegal enrollment practice, thoroughly document the interaction, as well as the individual's position and identity. Consider taking the issue to that individual's supervisor to get a quick resolution and secure the student's enrollment.

3. If you feel there are no appropriate district staff to appeal the issue, consider writing a letter to the school district superintendent, and copying the district's legal counsel, if known. When advocating for the student's enrollment, consider asking that the district change its policy to conform to federal law.

4. If a letter is unsuccessful, consider contacting the state's department of education to report the problem. By either searching the state department of education's website or contacting them the department directly, identify the state Title III coordinator and/or legal department to report the school district.

5. As a final option, consider whether litigation can be brought in court.

6. In taking any of these steps, you should consult with an experienced attorney.

Who can help?

- **Secretary, administrative assistant, front desk staff.**
- **McKinney-Vento liaison.**
- **Title III coordinator.**
- **School counselor.**
- **Special education coordinator.**

ADVOCACY RESOURCES

SAMPLE LETTER TO DISTRICT WHERE ENROLLMENT POLICIES ARE PROBLEMATIC

DATE

[NAME]
[SUPERINTENDENT, SCHOOL SYSTEM]
ADDRESS
ADDRESS
EMAIL

Re: School district obligations to serve all students regardless of background or immigration status

Dear Superintendent [NAME]:

I write to remind you of a shared goal: protecting all students' right to access public education, regardless of their background or immigration status. As you know, all students have the right to enroll in public school, irrespective of the actual or perceived citizenship or immigration status of the students or their parents or guardians. More than thirty-nine years ago in *Plyler v. Doe*, the United States Supreme Court held that children cannot be denied equal access to enroll in public schools based on their immigration status.[105] Under federal law, public elementary and secondary schools must ensure that their policies, practices, and procedures do not discriminate on the basis of race, color, or national origin.[106]

The District's Registration and Enrollment Materials Violate Federal and/or State Law
It has come to our attention that some of your publicly available school registration and enrollment materials contain requirements that prevent or discourage undocumented students or documented students in mixed-status families from enrolling in and attending your schools. Specifically, *[insert summary of details – e.g., the district handbook states that students must provide their a Social Security Number number to enroll in school].* These documents are attached at the end of this letter as exhibits. See Ex. A. Such requirements are prohibited by federal law and policy.[107]

To help school districts comply with their obligations under federal law, the United States Departments of Justice and Education released guidance to school districts in 2014, clarifying how districts must provide equal access to education for all students.[108] We have attached this guidance, which includes a letter and two fact sheets. *See Ex. B.* These documents explain that, under federal law, school districts cannot request information with the purpose or the effect of denying students access to public schools on the basis of, among other things, race, color, or national origin. Nor may districts chill or discourage students from attending public educational programs based on their or their parents' or guardians' actual or perceived national origin or immigration status. Indeed, the Eleventh Circuit has held that a statute that "significantly interfere[d] with the exercise of the right to an elementary public education as guaranteed by *Plyler*" violated the Equal Protection Clause.[109]

The law recognizes that schools may ask for information to confirm certain key facts necessary to the appropriate enrollment of students and the operation of public schools, such as a student's age, that the student lives in the district, and that the student has received the immunizations necessary to enroll in school. But districts may not require forms of proof of this or related information that are difficult or impossible for undocumented students or students with undocumented parents or guardians to obtain.

In addition to the issues noted above, we want to remind you that the McKinney-Vento Homeless Assistance Act[110] requires that school districts immediately enroll homeless students in schools, even if they are unable to provide documents at the time of enrollment or thereafter.[111] Children may be considered "homeless" under McKinney-Vento for many reasons, including when a child's family is sharing an apartment, manufactured home, or housing with other families due to economic hardship; when a child is living in a motel or campground; or when a child's parents are migratory workers.[112] To fully comply with McKinney-Vento, school districts must include a statement in any registration and enrollment materials stating that students experiencing homelessness will be immediately enrolled whether or not they can produce the kinds of documents described above.

Recommendations

There are some straightforward steps available to you to remedy the concerns we have raised, including that, for all registration, enrollment, and other related school materials (e.g., handbooks), whether available on paper or online, you *[include as factually appropriate]:*

1. Remove as a condition of enrollment all requests for U.S.-based identification, voter registration, and vehicle registration, for students or their parents or guardians[113];

2. State whenever you request a Social Security number that provision of such information is voluntary, and that parents or guardians may decline to provide it for any reason by signing a statement of objection under *[state statute if applicable]* and link to a sample statement of objection in English and Spanish[114];

3. Where a form includes a space for a Social Security number, insert "voluntary" in parentheses next to this space[115];

4. Amend requests for birth certificates to explicitly state that families may prove the age of their child using other documents, including, but not limited to, passports, adoption records, religious records, official school transcripts, and affidavits, as set forth in *[add regulations or rules based on state or district policy];*

5. Amend requests for leases or utility bills to explicitly state that families may provide proof of residency using other documents, including, but not limited to, letters from familial employers, copies of money orders made out for payment of rent, cellphone bills, and affidavits;

6. Provide all registration and enrollment materials in a language that students and parents or guardians understand.[116]

We are willing to work with you to review any changes you propose to district materials. We look forward to your response by *[date].* We look forward to meeting our shared goal of ensuring that all students' right to access education is properly protected, as required by state law, federal statutes, and the U.S. Constitution. If you have questions, please contact me at *[insert contact information].*

Sincerely,

[Name]

ADDITIONAL RESOURCES

Additional resources, including sample letters and legal resources, can be found at **www.splcenter.org/plyler**

- *Contents of the May 8, 2014, Department of Justice and Department of Education Dear Colleague Letter on School Enrollment Procedures*
  Available at bit.ly/3br8Dzy
- *Contents of the May 8, 2014, Department of Justice and Department of Education Fact Sheet: Information on the Rights of All Children to Enroll in School*
  Available at bit.ly/3rwnIFD
- *Contents of the May 8, 2014, Department of Justice and Department of Education Information on the Rights of All Children to Enroll in School:*
  Questions and Answers for States, School Districts and Parents
  Available at bit.ly/30mNuA7
- *Excerpts from the January 8, 2015, Department of Justice and Department of Education Dear Colleague Letter on English Learner Students and Limited English Proficient Parents*
  Available at bit.ly/3btT4am

ENDNOTES

1 Plyler v. Doe, 457 U.S. 202, 221 (1982).
2 Id.
3 Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483, 493 (1954).
4 Plyler, 457 U.S. at 221; see also Id at 222 ("The inestimable toll of that deprivation on the social economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.").
5 42 U.S.C. § 11301 et seq.
6 This manual focuses on rights in the public primary and secondary school context and does not address the laws and policies that pertain to accessing postsecondary education.
7 Brown, 347 U.S. at 493.
8 Brown v. Bd. of Educ. of Topeka (Brown II), 349 U.S. 294 (1955).
9 20 U.S.C. §§ 1400-1419.
10 29 U.S.C. § 794; 34 C.F.R. § 104.
11 42 U.S.C. § 12131; 28 C.F.R. § 35.104.
12 IDEA requires placement in the "least restrictive environment," and Section 504 and the ADA require placement in the "most integrated setting" appropriate.
13 For a more detailed analysis of these legal requirements, see U.S. Dept. of Justice, "Letter of Findings Regarding United States' Investigation of the Georgia Network for Educational and Therapeutic Support, D.J. No. 169-19-71," U.S. Department of Justice, Civil Rights Division (July 15, 2015), available at https://www.iu1.org/files/services/lea/sessions/2015-09/GNETS%20letter.pdf.
14 42 U.S.C. § 11432(e)(3).
15 42 U.S.C. § 11433(a)(2)(B)(ii).
16 See U.S. Depts. of Justice and Educ., "Dear Colleague Letter: English Learner Students and English Proficient Parents (EL DCL)," at 22-24 (January Jan. 7, 2015), available at https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.
17 See 1991 OCR Guidance; see also Castañeda v. Pickard, 648 F.2d 989, 998 n.4 (5th Cir.1981).
18 Grutter v. Bollinger, 539 U.S. 306, 330 (2003).
19 Id.
20 Plyler, 457 U.S. at 205.
21 Id. at 211-12, 215.
22 Id. at 230.
23 Ala. Code § 31-13-27(a)(1).
24 Id. at §§ (b)-(c).
25 See Campbell Robertson, "After Ruling, Hispanics Flee an Alabama Town," *New York Times* (Oct. 3, 2011), *available at* http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?_r=1&partner=rss&emc=rss&pagewanted=all#; see also "Alabama's Shame: HB 56 and the War on Immigrants," Southern Poverty Law Center (January Jan. 31, 2012), available at https://www.splcenter.org/20120131/alabamas-shame-hb-56-and-war-immigrants.
26 See Hispanic Interest Coal. of Alabama v. Governor of Alabama, 691 F.3d 1236, 1249-50 (11th Cir. 2012).
27 See Office of the Assistant Attorney General, "Letter to Superintendent Bice from Assistant Attorney General Thomas E. Perez," U.S. Dept. of Educ. (May 1, 2012), available at http://media.al.com/bn/other/DOJ%20Letter%20May%202012.pdf.
28 The term "parent" refers to either or both biological or adoptive parents of the student, the student's legal guardian, a person in a parental relationship to the student, or a person exercising supervisory authority over the student in place of the parent.
29 The EEOA imposes obligations on state educational agencies as well as school districts. For purposes of this handbook, we focus on school districts rather than state educational agencies.
30 20 U.S.C. § 1703(f) ("No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."); 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.").
31 This refers to: parents who are themselves LEP; parents of EL students; or parents who are both.
32 20 U.S.C. § 1703(f).
33 Lau v. Nichols, 414 U.S. 563 (1974).
34 Id. at 566. The Lau decision was based on Title VI and since it was decided, the Supreme Court has determined that there is no private right of action to enforce the Title VI disparate impact regulations. However, individuals may bring administrative complaints of disparate treatement with the U.S. Departments of Education or Justice (http://www.justice.gov/crt/fcs). Lau's "essential holding" that "schools are not free to ignore the need of limited English speaking children for language assistance to enable them to participate in the instructional program of the district," has now been codified by the EEOA, section 1703(f). See Castañeda, 648 F.2d at 1008. The District Court for the Northern District of California reaffirmed the validity of the Lau decision as recently as 2015, in entering a new modified consent decree. Modified Consent Decree, Lau v. San Francisco Unif. Sch. Dist., Case No. C70-0627 CW (July 1, 2015), available at https://www.justice.gov/sites/default/files/crt/legacy/2015/07/06/laumodcd.pdf.
35 Castañeda, 648 F.2d at 1009-10 ("First, the court must examine carefully the evidence the record contains concerning the soundness of the educational theory or principles upon which the challenged program is based . . . The court's second inquiry would be whether the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school . . . If a school's program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned."). See also Issa v. Sch. Dist. of Lancaster, 847 F.3d 121, 133-34 (3d Cir. 2017) (using Castañeda framework); Methelus v. Sch. Bd. of Collier Cty., Florida, 243 F.Supp.3d 1266, 1276-77 (M.D. Fla. 2017) (same).
36 See EL DCL. Many of the specific recommendations that follow in these sections were adapted from the EL DCL. See also "Dep't of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 FR 41455 (June 18, 2002) ("Under DOJ regulations implementing Title VI ... recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP).").
37 See, e.g., T.R. v. Sch. Dist. of Philadelphia, 223 F. Supp. 3d 321, 335 (E.D. Pa. 2016); Jones v. Gusman, 296 F.R.D. 416, 454 (E.D. La. 2013); United States v. Maricopa Cty., Ariz., 915 F. Supp. 2d 1073, 1081 (D. Ariz. 2012).
38 Additional detail regarding school districts' specific obligations to EL students can be found in the EL DCL, in Section I. The list below is adapted from the recommendations in that letter.
39 These same tools help school districts identify which parents are LEP and will, either along with their child or independent of them, need language services.
40 Although there is no single, legally mandated method of assessing English-language proficiency, the most commonly used, reliable, and valid tool is called "ACCESS" (the newest version is "ACCESS 2.0"), created and disseminated by the Wisconsin Center for Education Research (WIDA). A brief summary of this assessment method is available here: https://www.wida.us/Assessment/ACCESS%202.0/documents/UnderstandingScores/WIDA_flyer_cut%20score%20parents.pdf.
41 Families of EL students have the right to opt out of EL services, but school districts must nonetheless assist students in achieving academic success. See EL DCL, at 29-32.

42 Castañeda, 648 F.2d at 1011.
43 Id.
44 Id. at 1014; see also EL DCL at 32.
45 Each state sets its own requirements for ESL teacher qualification, typically by statute. Without opining on any particular state's standards for ESL teacher qualification, we note that to provide EL services, educators must, at a minimum, have an EL teaching credential.
46 Castañeda, 648 F.2d at 1012-13.
47 Id. at 1011.
48 See EL DCL at 22-24.
49 For more information regarding EL students with disabilities, see the Department of Education's Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives, available at http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf. Among other things, that guidance addresses requirements for including EL students with disabilities in the annual ELP assessment, including providing appropriate accommodations or alternate assessments when necessary.
50 20 U.S.C. §§ 1412(a)(1),1413(a)(1); 34 C.F.R. §§ 300.101-300.102, 300.201.
51 EL DCL at 10. For "major" languages – i.e., the top languages spoken in the district – the district must provide the full array of language access, including having all essential documents translated in advance, and staff prepared to interpret. For "lower incidence" languages – typically those spoken by less than 5 percent of the district population, though definitions differ – districts are not required to have translators or interpreters on staff, though they must have access to qualified translation and interpretation services (e.g., through a language line) to ensure that those students and families can access school. Regardless, schools should create a standard handout in all relevant languages, advising parents or guardians of how they can request interpretation of written materials and/or assistance in communicating with staff.
52 EL DCL at 38-39.
53 For ELs with disabilities, the district may also be violating the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., the Rehabilitation Act § 504, 29 U.S.C. §§ 701, et seq., and/or Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. However, those laws are not the focus of this manual, so this document will not elaborate further on those possibilities, except to note that all three of those federal laws also have a private right of action.
54 McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431, et seq.
55 42 U.S.C. § 11434(a)(2).
56 U.S. Department of Education, Office of Elementary and Secondary Education, "Education for Homeless Children and Youths Program Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act (Title VII-B Guidance)," at 6 (July 27, 2016, updated Mar. 2, 2017), available at https://nche.ed.gov/legis/mv.php.
57 42 U.S.C. §§ 11432(g)(3)(C), (E).
58 Id. § 11432(g)(1)(C); see also Title VII-B Guidance at 32-33.
59 42 U.S.C. § 11432(g)(1)(J)(ii).
60 Id. § 11432(g)(3)(C)(iii).
61 Id. § 11432(g)(1)(J)(iii).
62 Id. § 11432(g)(1)(C); see also Title VII-B Guidance at 32-33.
63 Lampkin v. District of Columbia, 27 F.3d 605, 611-12 (D.C. Cir. 1994); National Law Center on Homelessness and Poverty, R.I. v. State of New York, 224 F.R.D. 314, 320 (E.D.N.Y. 2004).
64 34 CFR § 99.36.
65 20 U.S.C. § 1232(g); 34 C.F.R. § 99.
66 34 C.F.R. §§ 99.3(a)-(g).
67 Id. § 99.37.
68 Id.
69 An IEP is a written statement for each child with a disability that is developed, written, and revised in accordance with 34 C.F.R. §§ 300.320-24. See also 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a).
70 Though not mandated, schools typically document a student's free appropriate public education (FAPE) under Section 504 in a "504 Plan," which often includes the regular or special education and related aids and services a student needs, and the appropriate setting in which the student should receive those services, also called the student's "placement."
71 34 CFR § 99.31(a)(1)(i)(B); U.S. Dept. of Educ., 2011 FERPA Guidance for Parents, available at http://www2.ed.gov/policy/gen/guid/fpco/ferpa/for-parents.pdf ("2011 ED FERPA Parent Guidance"); U.S. Dept. of Educ., 2011 FERPA Guidance for School Officials, available at http://familypolicy.ed.gov/faq-page/ferpa-school-officials#t69n51 ("2011 ED FERPA for School Officials FAQ").
72 34 CFR § 99.31(a)(1); 2011 ED FERPA Parent Guidance; 2011 ED FERPA for School Officials FAQ.
73 For information on each state's compulsory attendance laws, consult National Center for Education Statistics, Compulsory school attendance laws, minimum and maximum age limits for required free education, by state: 2017, available at https://nces.ed.gov/programs/statereform/tab5_1.asp (displaying data for all 50 states).
74 See, e.g., Wisconsin v. Yoder, 406 U.S. 205 (1972) (determining that the First Amendment provided Amish families with a religious exemption from complying with their state's compulsory attendance laws); but see Fellowship Baptist Church v. Benton, 815 F.2d 485 (8th Cir. 1987) (declining to extend the Yoder ruling to Baptist families seeking a First Amendment religious exemption from their state's compulsory attendance laws, finding that no tenet of their Baptist faith conflicted with the state's administration of public education).
75 These students are also sometimes referred to as "SIFE" students—students with interrupted formal education.
76 See Garance Burke and Adrian Sainz, "AP Exclusive: Migrant children kept from enrolling in school," Associated Press (May 2, 2016), available at https://apnews.com/5a144ff0a59144328d02c115036815f0/ap-exclusive-migrant-children-kept-enrolling-school; see also Garance Burke, "Feds investigate Memphis school district over migrant bias," Associated Press (July 21, 2016), available at https://apnews.com/b3f1ac423d9149f5a0ed07f810e38d4e.
77 Some states have their own statutes protecting equal educational opportunity for national origin minorities. See, e.g., Florida Educational Equity Act, Fla. Stat. §1000.05 (2011). They also may have administrative procedures through state agencies to challenge the denial of enrollment. See N.Y. Attorney General Eric Schneiderman, "New York State Attorney General's Office and New York State Education Department Launch Review of Enrollment Procedures For Unaccompanied Minors and Undocumented Students," New York State Office of the Attorney General (Oct. 23, 2014), available at https://ag.ny.gov/press-release/new-york-state-attorney-generals-office-and-new-york-state-education-department-launch.
78 See Education Law Center of Pennsylvania and ACLU of Pennsylvania, "Issa v. School District of Lancaster," available at https://www.aclupa.org/our-work/legal/legaldocket/issa-v-school-district-lancaster/; see also American Civil Liberties Union, "NYCLU, LSCNY Sue Utica School District for Illegally Denying Refugee Youth an Education" (April 23, 2015), available at https://www.nyclu.org/en/press-releases/nyclu-lscny-sue-utica-school-district-illegally-denying-refugee-youth-education.
79 See Issa, 847 F.3d at 126.
80 N.Y. Attorney General Eric Schneiderman, "A.G. Schneiderman Announces Settlement Of Lawsuit Against Utica City School District To Ensure Equal Educational Opportunities For Immigrant And Refugee Students," New York State Office of the Attorney General (July 21, 2016), available at https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-lawsuit-against-utica-city-school-district-ensure.
81 See Methelus, 243 F.Supp.3d at 1268; Southern Poverty Law Center, "Lesly Methelus, et al. v. The District School Board of Collier County, Florida, et al." (May 16, 2016), available at https://www.splcenter.org/seeking-justice/case-docket/lesly-methelus-et-al-v-district-school-board-collier-county-florida-et.
82 In the case of McKinney-Vento students, as described above, they may enroll even if they do not have a fixed residence in the district.
83 Plyler, 457 U.S at 202 (finding that denying "innocent children" access to a public education "imposes a lifetime hardship on a discrete class of children" and "foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our Nation").
84 U.S. Depts. of Justice and Educ., "Fact Sheet about Dear Colleague Letter: Guidance for Sch. Dists. to Ensure Equal Access for All Children to Pub. Schs. Regardless of Immigration Status (Plyler Fact Sheet)," at 2 (May 8, 2014) available at https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201405.pdf; see also 5 U.S.C. § 552(a).
85 Plyler Fact Sheet at 1. Access to some of these documents (e.g., bank accounts) varies by state – it is important to check state law before enrolling.
86 See, e.g., Ga. Code Ann. § 20-2-150(d) (2010).

87 Guidance from the U.S. Departments of Justice and Education explains, "If a district chooses to request a Ssocial Ssecurity number, it shall inform the individual that the disclosure is voluntary, provide the statutory ... basis upon which it is seeking the number, and explain what uses will be made of it." Plyler Fact Sheet at 1.
88 Some states separately prohibit schools from requiring a Social Security number to enroll in public school. See, e.g., La. R.S. § 17:3914(C)(1)(j) (prohibiting school officials from requiring Social Security numbers to enroll students in public school).
89 See 20 U.S.C. § 7801(26) (prohibiting charging district residents to attend public school).
90 Doe v. Plyler, 458 F. Supp. 569 (E.D. Tx. 1978).
91 See, e.g., La. R.S. § 17:3991(E)(3) (prohibiting "[c]harg[ing] any pupil any tuition or an attendance fee of any kind"); see also La. Admin Code. tit. 28, pt. CXXXIX, § 2107(H) ("A charter school shall not charge any student any tuition or an attendance fee of any kind.").
92 List adapted from Plyler Fact Sheet.
93 We include references to immigration-related documents as a fact, but do not encourage students or parents to provide immigration-related materials to schools.
94 See Martinez v. Bynum, 461 U.S. 321, 328-29 (1983).
95 List adapted from Plyler Fact Sheet.
96 We suggest minimizing the amount of immigration-related paperwork that is presented to a child's school as part of the registration and enrollment process. School districts should not seek such documents and if they are presented to verify identity or guardianship, school officials should consider visually inspecting the documents but not maintaining a copy in the student's permanent file.
97 34 C.F.R § 99.3.
98 An example might include a grandparent who handles a child's educational issues and perhaps even lives with the child, although the parent still maintains custody.
99 Some custody orders, for example, limit one parent's unaccompanied access to the student, or limit access to student information for family court reasons.
100 42 U.S.C. § 11432(g)(3)(C)(iii).
101 See, e.g., La. R.S. § 17:170(a)(1)(A) ("Each person entering any school within the state for the first time, including elementary and secondary schools, kindergartens . . . at the time of registration or entry shall present satisfactory evidence of immunity to or immunization. . . or shall present evidence of an immunization program in progress.").
102 20 U.S.C. §§ 6391, 6811.
103 U.S. Depts. of Justice, Educ., and Health and Human Servs., "Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs," at 4 (Sept. 2014), available at https://www2.ed.gov/about/overview/focus/rights-unaccompanied-children-enroll-school.pdf.
104 Some state laws place minor limits on enrollment (e.g., limiting enrollment in the last few weeks of the school year), but generally, schools enroll all students no matter when they arrive.
105 457 U.S. 202 (1982).
106 See Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (Title IV); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI); the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, et seq. (EEOA).
107 See, infra, Part II.
108 See Dear Colleague Letter, U.S. Dept. of J. & U.S. Dept. of Ed., available at: https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf; Fact Sheet: Information on the Rights of All Children to Enroll in School, U.S. Dept. of J. & U.S. Dept. of Ed. (May 8, 2014), available at: https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf; Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, U.S. Dept. of J. & U.S. Dept. of Ed. (May 8, 2014), available at: https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf.
109 Hispanic Interest Coal. of Alabama v. Governor of Alabama, 691 F.3d 1236, 1245–49 (11th Cir. 2012).
110 42 U.S.C. §§ 11301 et seq.
111 42 U.S.C. § 11432(g)(3)(C)(i).
112 42 U.S.C. § 11434a(2).
113 Georgia State Board Rule 160-5-1-.28 (2)(d)(1) lists the documents acceptable for enrollment. It does not indicate that these documents must have been issued by or in the United States. Ga. Comp. R. & Regs. 160-5-1-.28 (Student Enrollment and Withdrawal), available at http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/SBOE%20Rules/160-5-1-.28.pdf.
114 Per Ga. Code § 20-2-150(d), a Georgia school district may request a student's Social Security Number, but must allow the parent to sign a waiver if they do not wish to provide the number for any reason. The Georgia Department of Education has issued guidance explicitly affirming this right, stating, "No student will be denied enrollment in a public school for declining to provide his or her Social Security number or for declining to apply for such a number." Department of Education, State of Georgia, "Guidance for the Student Enrollment and Withdrawal Rule, Revision Five," at 38 (Sept. 13, 2012), available at https://www.gadoe.org/External-Affairs-and-Policy/Policy/Documents/Guidance%20for%20Student%20Enrollment%20and%20Withdrawal%20Rule.pdf.
115 Id.
116 Federal law requires schools to provide meaningful access to English Language Learner (ELL) students and limited English proficient families. Under Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, public schools must ensure that ELL students can participate meaningfully and equally in educational programs. In addition, the Every Student Succeeds Act of 2015 requires districts accepting federal funds to provide language accommodations to non-English-speaking families. 20 U.S.C.A. § 6312(e)(4) ("The notice and information provided to parents under this subsection shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.").

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