THE RIGHTS OF IMMIGRANT CHILDREN AND ENGLISH LEARNERS
IN THE PUBLIC SCHOOLS

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2020 National ESEA Conference
Atlanta, Georgia

February 6, 2020

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SCHOOL OPENING ALERT

The U.S. Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202 (1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

As a result of the *Plyler* ruling, public schools may not:

- Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- Treat a student disparately to determine residency.
- Engage in any practices to "chill" the right of access to school.
- Require students or parents to disclose or document their immigration status.
- Make inquiries of students or parents that may expose their undocumented status.
- Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.
En 1982, el Tribunal Supremo de los Estados Unidos decidió en el caso titulado *Plyler v. Doe* [457 U.S. 202] que los niños y los jóvenes indocumentados tienen el mismo derecho a las escuelas públicas de primaria y secundaria que el que tienen sus contrapartes de nacionalidad estadounidense. Al igual que los demás niños, los estudiantes indocumentados están obligados a asistir a la escuela hasta que lleguen a la edad escolar requerida por la ley.

Bajo la decisión *Plyler*, las escuelas públicas no pueden:

- negarles admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentados, ya sea al momento de la matrícula o en cualquier otro momento.
- tratar a un estudiante en forma desigual o discriminatoria para determinar su situación legal y/o de residencia.
- tomar medidas o reglamentos que pudieran atemorizar a la comunidad indocumentada, con el resultado de que ellos no acudan a su derecho de acceso a las escuelas públicas.
- requerir que un estudiante o sus padres revele o documenten su situación legal y/o inmigratoria.
- investigar la situación legal y/o inmigratoria de un estudiante o de sus padres, aún cuando sólo sea por razones educativas, ya que esto puede poner en evidencia dicha situación.
- exigir que un estudiante obtenga un número de seguro social como pre-requisito de matrícula a un programa escolar.

La escuela debe de asignar un número de identificación a los estudiantes que no tienen tarjeta de seguro social. Los adultos sin tarjeta de seguro social aplicando para el programa de almuerzo y/o desayuno gratis para sus hijos sólo necesitan indicar en la solicitud que no tiene un número de seguro social.
2016-2017 Prototype Household Application for Free and Reduced Price School Meals
Complete one application per household. Please use a pen (not a pencil).

Apply online at www.abcdefg.edu

STEP 1
List ALL Household Members who are infants, children, and students up to and including grade 12 (if more spaces are required for additional names, attach another sheet of paper)

Definition of Household Member: "Anyone who is living with you and shares income and expenses, even if not related."

Children in Foster care and children who meet the definition of Homeless, Migrant, or Runaway are eligible for free meals. Read How to Apply for Free and Reduced Price School Meals for more information.

Child's First Name

MI

Child's Last Name

Grade

Student? Yes No

Homeless, Migrant, Runaway

STEP 2
Do any Household Members (including you) currently participate in one or more of the following assistance programs: SNAP, TANF, or FDPIR?

If NO > Go to STEP 3.

If YES > Write a case number here then go to STEP 4 (Do not complete STEP 3)

Case Number:

Write only one case number in this space.

STEP 3
Report Income for ALL Household Members (Skip this step if you answered 'Yes' to STEP 2)

A. Child Income
Sometimes children in the household earn or receive income. Please include the TOTAL income received by all Household Members listed in STEP 1 here.

Are you unsure what income to include here?
Flip the page and review the charts titled "Sources of Income" for more information.
The "Sources of Income for Children" chart will help you with the Child Income section.
The "Sources of Income for Adults" chart will help you with the All Adult Household Members section.

Name of Child Member (First and Last)

Earnings from Work

Weekly Bi-Weekly 2x Monthly Monthly

Public Assistance
Child Support Allowance

Weekly Bi-Weekly 2x Monthly Monthly

Income

Weekly Bi-Weekly 2x Monthly Monthly

Total Household Members (Children and Adults)

Last Four Digits of Social Security Number (SSN) of Primary Wage Earnings or Other Adult Household Member

Check if no SSN

STEP 4
Contact information and adult signature

"I certify (promise) that all information on this application is true and that all income is reported. I understand that this information is given in connection with the receipt of Federal funds, and that school officials may verify (check) the information. I am aware that if I purposely give false information, my children may lose meal benefits, and I may be prosecuted under applicable State and Federal laws."

Street Address (if available)

Apt #

City

State Zip

Daytime Phone and Email (optional)

Printed name of adult signing the form

Signature of adult

Today's date
### Sources of Income for Children

<table>
<thead>
<tr>
<th>Sources of Child Income</th>
<th>Example(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Earnings from work</td>
<td>- A child has a regular full or part-time job where they earn a salary or wages</td>
</tr>
<tr>
<td>- Social Security</td>
<td>- A child is blind or disabled and receives Social Security benefits</td>
</tr>
<tr>
<td>- Disability Payments</td>
<td>- A Parent is disabled, retired, or deceased, and their child receives Social Security benefits</td>
</tr>
<tr>
<td>- Survivor's Benefits</td>
<td></td>
</tr>
<tr>
<td>- Income from person outside the household</td>
<td>- A friend or extended family member regularly gives a child spending money</td>
</tr>
<tr>
<td>- Income from any other source</td>
<td>- A child receives regular income from a private pension fund, annuity, or trust</td>
</tr>
</tbody>
</table>

### Sources of Income for Adults

<table>
<thead>
<tr>
<th>Sources of Work</th>
<th>Public Assistance / Allimony / Child Support</th>
<th>Pensions / Retirement / All Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Salary, wages, cash bonuses</td>
<td>- Unemployment benefits</td>
<td>- Social Security (including railroad retirement and black lung benefits)</td>
</tr>
<tr>
<td>- Not Income from self-employment (farm or business)</td>
<td>- Worker's compensation</td>
<td>- Private pensions or disability benefits</td>
</tr>
<tr>
<td>If you are in the U.S. Military:</td>
<td>- Supplemental Security Income (SSI)</td>
<td>- Regular income from trusts or estates</td>
</tr>
<tr>
<td>- Basic pay and cash bonuses</td>
<td>- Cash assistance from State or local government</td>
<td>- Annuities</td>
</tr>
<tr>
<td>(do NOT include combat pay, FSSA or privatized housing allowances)</td>
<td>- Allimony payments</td>
<td>- Investment income</td>
</tr>
<tr>
<td>- Allotments for off-base housing, food and clothing</td>
<td>- Child support payments</td>
<td>- Earned Interest</td>
</tr>
<tr>
<td></td>
<td>- Veteran's benefits</td>
<td>- Rental income</td>
</tr>
<tr>
<td></td>
<td>- Strike benefits</td>
<td>- Regular cash payments from outside household</td>
</tr>
</tbody>
</table>

### Children’s Racial and Ethnic Identities

We are required to ask for information about your children’s race and ethnicity. This information is important and helps to make sure we are fully serving our community. Responding to this section is optional and does not affect your children’s eligibility for free or reduced price meals.

Ethnicity (check one): [ ] Hispanic or Latino [ ] Not Hispanic or Latino [ ] Black or African American [ ] Native Hawaiian or Other Pacific Islander [ ] White

Race (check one or more): [ ] American Indian or Alaskan Native [ ] Asian [ ] White

The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the last four digits of the social security number of the adult household member who signs the application. The last four digits of the social security number is not required if you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program, or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals and for administration and enforcement of the lunch and breakfast programs. We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, auditors for program reviews, and law enforcement officials to help them look into violations of program rules.

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, age, disability, sex, pregnancy, gender identity, or sexual orientation. If you believe you have been discriminated against by any of these groups, please contact the USDA at the Office of Civil Rights, 200 Independence Avenue, SW, Washington, D.C. 20250-9410, or call 1-866-632-9992 (Toll free) or 800-877-8339 (for hearing impaired individuals) or 800-936-7233 (English language individuals) or 800-277-8339 (Spanish language individuals), or write USDA, Office of Civil Rights, USDA Building 4, Room 400, 14th Street and Independence Avenue, SW, Washington, DC 20250-9410, or email to program.intake@usda.gov. This institution is an equal opportunity provider.

### Do Not Fill Out For School Use Only

Annual Income Conversion: Weekly x 52, Every 2 Weeks x 26, Twice a Month x 24 Monthly x 12

<table>
<thead>
<tr>
<th>Total Income</th>
<th>Household size</th>
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<tbody>
<tr>
<td></td>
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Determining Official’s Signature

<table>
<thead>
<tr>
<th>Date</th>
<th>Confirmiting Official’s Signature</th>
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<tbody>
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<table>
<thead>
<tr>
<th>Eligibility:</th>
<th>Free</th>
<th>Reduced</th>
<th>Denied</th>
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<tbody>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>Verifying Official’s Signature</th>
<th>Date</th>
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</tbody>
</table>
Translated Applications

This page features foreign language translations of the Prototype Application for Free and Reduced Price School Meals. They are provided by USDA as a template to assist State and local agencies in serving households where English is not spoken as a primary language. Households may also download these resources directly to be filled out and submitted to their local school district.

In addition to the application form, each translated packet also includes application instructions, a parent letter/FAQ. We also provide a packet of communications documents to be used by State and local agencies for information sharing requests, income verification, and benefit issuance notices to households. State and local agencies responsible for administering the school meal programs may use these materials in their current form, or may adapt them as needed.

Additionally, an "I Speak" resource document is available to help identify the primary language of non-English speakers. It uses a short phrase in each of the 49 languages that an applicant can check to indicate the language they speak. "I Speak" can help Local Educational Agencies select the appropriate translation as well as ensure consistent and effective interaction with applicants who have limited English proficiency.

<table>
<thead>
<tr>
<th>Albanian</th>
<th>Farsi</th>
<th>Italian</th>
<th>Nepali</th>
<th>Spanish</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amharic</td>
<td>French</td>
<td>Italian Farsi</td>
<td>I Mien</td>
<td>Tagalog</td>
</tr>
<tr>
<td>Arabic</td>
<td>French Creole</td>
<td>Italian Creole</td>
<td>Jamaican Creole</td>
<td>Thai</td>
</tr>
<tr>
<td>Armenian</td>
<td>Greek</td>
<td>Japanese</td>
<td>Karen</td>
<td>Tigrinya</td>
</tr>
<tr>
<td>Bengali</td>
<td>Gujarati</td>
<td>Korean</td>
<td>Khmer</td>
<td>Ukrainian</td>
</tr>
<tr>
<td>Bosnian</td>
<td>Haitian Creole</td>
<td>Korean</td>
<td>Khmer</td>
<td>Ukrainian</td>
</tr>
<tr>
<td>Burmese</td>
<td>Hindi</td>
<td>Kru</td>
<td>Khmer</td>
<td>Ukrainian</td>
</tr>
<tr>
<td>Chinese (Simplified)</td>
<td>Hmong</td>
<td>Kurdish</td>
<td>Kru</td>
<td>Urdu</td>
</tr>
<tr>
<td>Chinese (Traditional)</td>
<td>Igbo</td>
<td>Kurdish</td>
<td>Kru</td>
<td>Vietnamese</td>
</tr>
<tr>
<td>Croatian</td>
<td>Ilokano</td>
<td>Laotian</td>
<td>Laotian</td>
<td>Yiddish</td>
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<tr>
<td></td>
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<td>Laotian</td>
<td>Laotian</td>
<td>Yoruba</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sudanese</td>
<td>Sudanese</td>
<td></td>
</tr>
</tbody>
</table>
Language Rights Issues


The U.S. Supreme Court held (1) that discrimination on the basis of language proficiency is discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964 and (2) that treating people with different needs in the same way is not equal treatment.

Title VI of the Civil Rights Act of 1964 states, “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.”

In **Lau,** the U.S. Supreme Court stated, in part, “Basic 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 these 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.”

**Castaneda v. Pickard,** 648 F.2d 989 (5th Cir. 1981)

The Court of Appeals articulated a three-part test for assessing a school system’s treatment of limited English proficient students. The standard requires (1) a sound approach to the education of these students, (2) reasonable implementation of the approach, and (3) outcomes reflecting that the approach is working.

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Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them

This fact sheet answers common questions about the rights of parents and guardians who do not speak, listen, read, or write English proficiently because it is not their primary language.

**Must my child’s school provide information to me in a language I can understand?**

Yes. Schools must communicate information to limited English proficient parents in a language they can understand about any program, service, or activity that is called to the attention of parents who are proficient in English. This includes, but is not limited to, information related to:

- registration and enrollment in school and school programs
- language assistance programs
- report cards
- student discipline policies and procedures
- special education and related services, and meetings to discuss special education
- parent-teacher conferences
- grievance procedures and notices of nondiscrimination
- parent handbooks
- gifted and talented programs
- magnet and charter schools
- requests for parent permission for student participation in school activities

**Must a school provide language assistance if I request it even if my child is proficient in English and I am somewhat proficient in English?**

Yes. Schools must respond to a parent’s request for language assistance and remember that parents can be limited English proficient even if their child is proficient in English.

**May my child’s school ask my child, other students, or untrained school staff to translate or interpret for me?**

No. Schools must provide translation or interpretation from appropriate and competent individuals and may not rely on or ask students, siblings, friends, or untrained school staff to translate or interpret for parents.

**What information should I expect from the school if my child is an English learner?**

When your child enrolls, you should receive a home language survey or similar form to fill out that helps the school identify potential English learners, who are eligible for language assistance services. If your child is identified as an English learner, the school must notify you in writing within 30 days of the school year starting with information about your child’s English language proficiency level, programs and services available to meet your child’s educational needs, and your right to opt your child out of a program or particular services for English learners. For more information about the rights of English learners, visit http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf.
What type of processes can school districts use to identify limited English proficient parents?

- School districts must develop and implement a process for determining whether parents are limited English proficient and identifying their language needs.
- The process should be designed to identify all limited English proficient parents, including parents and guardians whose primary language is not common in the district or whose children are proficient in English.
- A school district may, for example, use a home language survey, to inquire whether a parent requires oral and/or written communication in a language other than English.
- The school’s initial inquiry should, of course, be translated into languages that are common in the school and surrounding community so that that the inquiry is designed to reach parents in a language they are likely to understand.

What steps must school districts take to provide effective language assistance to LEP parents?

- School districts must provide effective language assistance to limited English proficient parents, such as by offering translated materials or a language interpreter. Language assistance must be free and provided by appropriate and competent staff, or through appropriate and competent outside resources.
- School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue, and are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.
- It is not sufficient for the staff merely to be bilingual. For example, a staff member who is bilingual may be able to communicate directly with limited English proficient parents in a different language, but may not be competent to interpret in and out of that language, or to translate documents.

What can I do if I have questions, want additional information, or believe a school is not complying with these requirements?

- You may visit the website of the U.S. Department of Education’s Office for Civil Rights (OCR) at www.ed.gov/ocr or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at ocr@ed.gov. For more information about filing a complaint, visit www.ed.gov/ocr/complaintintro.html.
- You may visit the website of the U.S. Department of Justice’s Civil Rights Division at www.justice.gov/crt/about/edu/ or contact DOJ at (877) 292-3804 or at education@usdoj.gov. For more information about filing a complaint, visit www.justice.gov/crt/complaint/#three.
- For more information about school districts’ obligations to English learner students and limited English proficient parents, additional OCR guidance is available at http://www2.ed.gov/about/offices/list/ocr/ellresources.html.
The Legal Requirement for School Districts to Translate/Interpret for Parents Who Do Not Speak English

All school districts to which Title VI of the Civil Rights Act of 1964 applies are required by federal law to translate or interpret all documents and communications with parents who are not fluent in English into a language they can understand.

On May 25, 1970, the U.S. Department of Health, Education, and Welfare—the predecessor to the U.S. Department of Education—Office for Civil Rights (OCR) issued formal guidance establishing the policy that “[s]chool districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.” In the 1974 U.S. Supreme Court case, *Lau v. Nichols*, 414 U.S. 563, the Court affirmed the validity of these guidelines. Then in 2000, OCR further reinforced these requirements by issuing a document which stated that “Title VI is violated if . . . parents whose English is limited do not receive school notices and other information in a language they can understand.”

Recent OCR Cases of School Districts Failing to Meet the Requirement

OCR has resolved three recent cases where school districts failed to provide adequate translation and interpretation services to parents who speak a language other than English. In Cleveland, Ohio, a complaint was filed directly to OCR and in Tulsa, Oklahoma and Dearborn, Michigan the school districts were found to violate the law as a result of OCR compliance reviews.

*Cleveland Metropolitan School District*

The complaint alleged that the school district failed to provide limited English proficient (LEP) parents with information concerning activities and other school-related matters in a language that they could understand. The complaint also alleged the district failed to provide information to LEP parents regarding the proposed expulsion of their son in a language that they could understand.

The resolution reached with OCR requires the district to implement a written plan to provide language assistance to LEP parents. The plan requires notifying parents, in a language they can understand, of the availability of language assistance; identifying which parents need language assistance; ensuring that a list is maintained in each building and on the district level of the parents needing assistance; advising staff of parents’ need for assistance; ensuring that staff obtain adequate translators in a timely manner; and ensuring
that vital documents are translated into each language spoken by parents likely to be affected by the district’s programs and activities.

Tulsa Public Schools

The information obtained during OCR’s investigation indicated that the school district did not have written policies or procedures for responding to parent requests for documents in languages other than English or for a foreign language interpreter. The district failed to consistently track or keep records relating to which parents in the district are LEP, the requests for translation or interpretation services, and the services provided to LEP parents. The investigation also found that the district did not have a set process in place for notifying LEP parents that it has interpreters and translators available for school-related communications. The district failed to ensure that the interpreters and translators it did have were adequately trained. OCR also noted that the district failed to provide translation and interpretation services for parents who speak languages other than Spanish.

The resolution reached with the district requires it to submit a detailed plan for providing meaningful access to information about its programs and activities for LEP parents. The district must provide language assistance services to all LEP parents and guardians of district students needing such assistance. Also, the district must provide training for administrators and staff regarding the provision of language assistance services as well as ensure that all its interpreters and translators are appropriately trained and proficient in the language for which they provide assistance.

Dearborn Public Schools

The OCR investigation found that the school district did not have an effective process for determining which students have LEP parents and for identifying the language needs of those parents. In addition, the district did not notify any of the LEP parents of the availability of translation and interpretation services, which were not available to all LEP parents, nor did it ensure that the interpreters and translators it was using were competent. While an interpreter for Arabic-speaking LEP parents was typically available, there was no system in place to facilitate communication with a parent who spoke neither English nor Arabic. Also, the district did not have a system in place for notifying district teachers and staff about the needs of LEP parents, and did not provide appropriate guidance to staff about communicating with LEP parents in a language other than English.

The resolution reached with the district requires it to implement a written plan to provide language assistance services to LEP parents that ensures that they have meaningful access to the district’s programs and activities. The plan must include the use of various services, such as onsite translators/interpreters, telephonic translators/interpreters, and effective translation programs. Also, the district must revise its home language survey to ensure that it accurately identifies LEP parents in the district needing language assistance.

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Special Education and English Learners

Providing a Special Education Program for English Learner (EL) students may present certain challenges to educators, but the mandates and protections concerning provision of these educational services, found in federal law, are clear.

There are two key fundamental principles which must be observed by a school district in this area.

Both Title VI / EEOA and IDEA Apply

An English Learner student who needs, or could potentially need, Special Education services must be accorded the right to receive both a language acquisition program (such as English as a Second Language or similar services) and Special Education services, not one or the other. Both must be made available to the student.

In joint guidance issued in the form of a Dear Colleague letter, the U. S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice stated:

The Departments are aware that some school districts have a formal or informal policy of ‘no dual services,’ i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA [Individuals with Disabilities Education Act] and Federal civil rights laws, and the Departments expect SEAs to address these policies in monitoring districts’ compliance with Federal law.¹

Language of SPED Testing and Evaluation

When evaluating an English Learner for possible Special Education services, it is important to conduct that evaluation in a manner and language that is comprehensible to the student. If the evaluation is conducted in English and the student does not easily understand English, the evaluation results are likely to be unreliable and lead to a misidentification of the student for Special Education services.

Regarding this issue, the Education and Justice Departments stated in the joint guidance:

When conducting [Special Education] evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other

evaluation materials to be used. School districts must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.3

*   *   *   *

Recent DOJ Enforcement Agreement

The Department of Justice (DOJ) has entered into a number of consent agreements with school districts under the Equal Educational Opportunities Act of 1974 (EOOA)3 regarding these issues. The most instructive is an agreement entered into in 2014 with the Crestwood School District in Michigan. A 2011 complaint filed with DOJ included a wide range of allegations that, among other things, the Crestwood School District was not providing sufficient language acquisition services or sufficient translation and interpretation services to special education students. The ensuing investigation led to a consent agreement, the elements of which demonstrate what the Government has determined must be provided in situations relating to Special Education and English Learner students:

Crestwood School District Consent Agreement4

- Pursuant to the consent agreement, all special education assessments must be conducted in the student's native language or "in the form most likely to yield accurate information" pertaining to an assessment of the student's potential disabilities. Furthermore, the interpretation of these assessments must include consultation with an ESL instructor to ensure that the student’s language barrier does not result in a misdiagnosis of special education needs.

- The parents of students with both English language acquisition and special education needs must be informed in writing, in a language they can understand, that their child is entitled to both language acquisition and special education services.

- All "Individualized Education Program (IEP) Teams" that assess the educational needs of special education students and propose appropriate courses of action must include an ESL instructor whenever a plan for a student who is entitled to both special education and language acquisition services is being considered. These teams must document, on at least an annual basis: (1) the student’s progress in acquiring English language skills; (2) the extent to which the student’s disability is affecting such progress; (3) any decisions regarding the impact of the student’s disability on the language acquisition delivery plan, and the rationale for those decisions; and (4) the language acquisition program models and the instructors assigned to the student.

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www.facebook.com/MigrantLegalActionProgram

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2 Id., at 24

3 The EEOA “requires states and school districts to provide English Language Learner (ELL) students with appropriate services to overcome language barriers....” U.S. Department of Justice, Civil Rights Division, https://www.justice.gov/crt/educational-opportunities-section

ACCESS TO POST-SECONDARY EDUCATION FOR IMMIGRANT STUDENTS

There is often confusion between the issue of (1) gaining admission or access to post-secondary education and (2) paying for that education.

Access: Of all the states and the District of Columbia, only three states currently restrict access to publicly funded colleges by undocumented students: South Carolina, Alabama, and Georgia. (Georgia denies admission to undocumented students to any schools that do not admit all academically qualified students.) All other states allow undocumented students to be admitted to public two year and four year colleges with the same admissions criteria that other students must have to matriculate. Private institutions can do what the institution chooses to do.

In-state/Out-of-state tuition:

The following states allow in-state tuition for undocumented students who graduate from high schools in the state:

California       Minnesota
Colorado         Nebraska
Connecticut       New Jersey
District of Columbia New Mexico
Florida           New York
Hawaii (University of Hawaii campuses) Oklahoma
Illinois          Oregon
Kansas            Rhode Island
Kentucky          Texas
Maryland          Utah
Michigan (University of Michigan campuses) Washington

Access to federal assistance: Undocumented students, including those who have been granted DACA protection, do not have a right to federal loans or grants.

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MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the “Exceptions to the General Rule” section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

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1 Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, “Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations” 10029.1 (July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, “Enforcement Actions at Schools” (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, “Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies” HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, “Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).
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- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target’s only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;
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- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.
Do's and Don'ts for students and their families if ICE authorities come to their homes

🎉 Do not open the door. ICE authorities cannot come in without a signed warrant. Tell them to pass the warrant under the door before you open it.

🎉 Remain silent. ICE can use anything you say against you in your immigration case, so claim your right to remain silent! Say “I plead the Fifth and choose to remain silent.”

🎉 Do not sign. Don’t sign anything ICE gives you without talking to an attorney.

🎉 Report the raid immediately to the United We Dream hotline: 844-363-1423
Take pictures, video and notes: Write down badge numbers, the number of agents, and exactly what happened!

🎉 Fight back! Get a trustworthy attorney, contact a local immigrant rights organization and explore all options to fight your case. If detained, you may be able to get bail—don’t give up hope!

For more resources and information, contact:

🎉 American Federation of Teachers
www.aft.org/immigration

🎉 Share My Lesson
www.sharemylesson.com/immigration

🎉 Colorado
www.colorincolrado.org/immigration

🎉 National Immigration Law Center
www.nilc.org

🎉 United We Dream
www.unitedwedream.org

🎉 First Focus
www.firstfocus.org
Editor's note: While originally published in 2011, this story was updated in 2017 to reflect current statistics, policies and conditions in the United States. Click here for a detailed list of sources.

Myths about immigration and immigrants are common. Here are a few of the most frequently heard misconceptions—along with information to help you and your students separate fact from fear.

When students make statements that are unfounded, one response is to simply ask, "How do you know that's true?" Whatever the answer—even if it's "That's what my parents say"—probe a little further. Ask, "Where do you think they got that information?" or "That sounds like it might be an opinion, not a fact." Guide students to find a reliable source for accurate information and help them figure out how to check the facts.

1. Most immigrants are here illegally.

With so much controversy around the issue of immigrants who are undocumented, it's easy to overlook the fact that most of the foreign-born people living in the United States followed the rules and have permission to be here. Of the more than 43 million foreign-born people who were living in the United States in 2014, around 44 percent were naturalized U.S. citizens. Those who were not naturalized were either lawful permanent residents, also known as green-card holders (27 percent of all foreign-born people), or immigrants who were unauthorized (some 11 million people, representing 25.5 percent of all foreign-born people). Although it is not known exactly what percentage of that 11 million originally entered legally with valid visas and let their visas expire (experts estimate it to be approximately 40 percent), it is known that—by far—the nation
with the most visitors who do not leave at the end of their authorized stays is Canada.

2. It’s easy to enter the country legally. My ancestors did; why can’t immigrants today?

If you hear students making this statement, ask them when their ancestors immigrated and if they know what the entry requirements were at the time. For about the first 100 years, the United States had an “open immigration system that allowed any able-bodied immigrant in,” according to immigration historian David Reimers. Back then, the biggest obstacle that would-be immigrants faced was getting here. Some even sold themselves into indentured servitude to do so.

Today, however, many rules specify who may enter and remain in the country legally. There is also a rigorous process for obtaining documentation to enter the United States as a resident, including applying for immigrant visas and permanent resident/green-card status. Many students’ immigrant ancestors who arrived between 1790 and 1924 would not have been allowed in under the current policy.

Generally, permission to enter and stay in the country as a documented immigrant is limited to people who are highly trained in a skill that is in short supply here and have been offered a job by a U.S. employer, are escaping political persecution, are joining close family already here or are winners of the green-card lottery.

3. Today's immigrants don't want to learn English.

While most first-generation immigrants may speak their first language at home, 35 percent of those age 5 or older speak English “very well” and 21 percent speak it “well,” according to the U.S. Census Bureau. Nearly 730,000 people became naturalized citizens during the 2015 fiscal year. They had to overcome such obstacles as traveling to the United States, finding a job, tackling language barriers, paying naturalization and lawyers’ fees and dealing with an ever-changing immigration bureaucracy. Immigrants must speak, read, write and understand the English language, not only for the naturalization application process, but also so they can pass a 100-question civics test that has both oral and written components.

It’s also worth discussing with students that the current demand for English instruction is greater than the services available in many parts of the country. Also explore with them false assumptions about “today’s” immigrants versus those who arrived in prior generations. For example, ask students to find out how long it took their ancestors to stop using their first language. “Earlier immigrant groups held on to their cultures fiercely,” notes Reimers. “When the United States entered the First World War [in 1917], there were over 700 German-language newspapers.
Yet German immigration had peaked in the 1870s."

4. Immigrants take good jobs from U.S. citizens.

Ask students what kinds of jobs they think immigrants are taking. According to the American Immigration Council, a nonpartisan group, research indicates there is little connection between immigrant labor and unemployment rates of native-born workers. Two trends—better education and an aging population—have resulted in a decrease in the number of workers born in the United States who are willing or available to take low-paying jobs. Across all industries and occupations, though, immigrants who are naturalized citizens and non-citizens are outnumbered by workers born in the United States (see Table 1.7).

Another version of this myth is that it is undocumented immigrants who are taking jobs. However, the U.S. civilian workforce included 8 million unauthorized immigrants in 2014, which accounts for only 5 percent of the entire workforce. Compared with their small share of the civilian workforce overall, immigrants without authorization are only overrepresented in service, farming and construction occupations (see Table 1). This may be due to the fact that, to fill the void of low-skilled U.S. workers, employers often hire undocumented immigrant workers. One of the consequences of this practice is that it is easier for unscrupulous employers to exploit this labor source, paying immigrants less, refusing to provide benefits and ignoring worker-safety laws. On an economic level, U.S. citizens benefit from relatively low prices on food and other goods produced by undocumented immigrant labor.

5. “The worst” people from other countries are coming to the United States and bringing crime and violence.

Immigrants come to this country for a few primary reasons: to work, to be reunited with family members or to escape a dangerous situation. Most are couples, families with children, and workers who are integral to the U.S. economy. Statistics show that immigrants are less likely to commit serious crimes or be behind bars than native-born people are, and high rates of immigration are associated with lower rates of violent crime and property crime. For instance, "sanctuary counties" average 35.5 fewer crimes per 10,000 people compared to non-sanctuary counties. This holds true for immigrants who are documented and undocumented, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not “criminals.”

According to the American Immigration Council: “Between 1990 and 2013 the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent
and the number of unauthorized immigrants more than tripled. ... During the same period, FBI data indicate that the violent crime rate and property crime rate declined 48 percent ... [and] 41 percent [respectively]." The truth is, foreign-born people in the United States—whether they are naturalized citizens, permanent residents or immigrants who are undocumented—are incarcerated at a much lower rate than native-born Americans.

6. Undocumented immigrants don’t pay taxes and burden the national economy.

Ask students to name some ways U.S. residents pay taxes. They might come up with income tax or sales tax. Immigrants who are undocumented pay taxes every time they buy taxable goods such as gas, clothes or new appliances (depending on where they reside). They also contribute to property taxes—a main source of school funding—when they buy or rent a house or apartment. A 2017 report from the Institute on Taxation and Economic Policy highlights that undocumented immigrants pay an estimated $11.74 billion in state and local taxes a year. The U.S. Social Security Administration estimated that in 2010 undocumented immigrants—and their employers—paid $13 billion in payroll taxes alone for benefits they will never get. They can receive schooling and emergency medical care but not welfare or food stamps. Under the 1996 welfare law, most government programs require proof of documentation, and even immigrants with documents cannot receive these benefits until they have been in the United States for more than five years.

7. The United States is being overrun by immigrants like never before.

From 1890 to 1910, the foreign-born population of the United States fluctuated between 13.6 and nearly 15 percent; the peak year for admission of new immigrants was 1907, when approximately 1.3 million people entered the country legally. In 2010, about 13 percent of the population was foreign-born (see Table 1). Since the start of the recession in 2008, the number of immigrants without documentation coming into the country has fallen each year and, in more recent years, the number has stabilized. Many people claim that immigrants have “anchor babies”—an offensive term for giving birth to children in the United States so that the whole family can stay in the country (and a narrative that contributes to the myth that the immigrant population is exploding).

According to the 14th Amendment of the U.S. Constitution, a child born on U.S. soil is automatically a U.S. citizen. However, immigration judges will not keep immigrant parents in the United States just because their children are U.S.
citizens. In 2013, the federal government deported 72,410 foreign-born parents whose children had been born in the United States. U.S. citizens must be at least 21 before they can petition for a foreign-born parent to receive legal-resident status. Even then, the process is long and difficult. In reality, there is no such thing as an “anchor baby.” The vast majority of the 4 million immigrant adults without documentation who live with their children who were born in the United States have no protection from deportation.

8. We can stop undocumented immigrants coming to the United States by building a wall along the border with Mexico.

Ask students, “How do you think immigrants come to the United States?”

Immigrants who enter the United States across the United States-Mexico border without authorization could be from any number of geographical areas. The majority of unauthorized immigrants in the United States are from Mexico, but their estimated number—5.8 million in 2014—has declined by approximately 500,000 people since 2009. In 2014, 5.8 million Mexican immigrants were living in the United States without authorization, down from 6.9 million in 2007. Additionally, the number of immigrants from nations other than Mexico who are living in the United States without authorization grew to an estimated 5.3 million in 2014. Populations of immigrants who are undocumented increased from Asia, Central America and sub-Saharan Africa. So, a wall along the border with Mexico would not “stop” undocumented immigrants from coming to the United States. Building a wall or fence along the entire Mexico border is unlikely to prevent unauthorized entry. Details aside, history has shown that people have always found ways to cross walls and borders by air and sea as well as over land.

9. Banning immigrants and refugees from majority-Muslim countries will protect the United States from terrorists.

A recent executive order, issued by President Donald Trump in March 2017, blocked the entry of citizens from six Muslim-majority countries for 90 days, ostensibly to protect Americans from terrorism. The title of this executive order, "Protecting the Nation From Foreign Terrorist Entry Into the United States," seems to equate the people most affected by the ban—Muslims—with the term foreign terrorists, implying that barring Muslims from entry would protect the United States from harm. However, between 1975 and 2015, no fatalities have been committed in the United States by foreign-born extremists from the countries covered by the executive order. According to Alex Nowrasteh, an immigration expert at the Cato Institute, “[Between 1975 and 2015], the annual chance of being murdered by somebody other than a foreign-born terrorist was 252.9 times greater than the chance of dying in a terrorist attack committed by a
foreign-born terrorist."

10. Refugees are not screened before entering the United States.

Ask students what the screening process is for refugees. Refugees undergo more rigorous screenings than any other individuals the government allows in the United States. It remains an extremely lengthy and rigorous process, which includes multiple background checks; fingerprint tests; interviews; health screenings; and applications with multiple intelligence, law enforcement and security agencies. The average length of time it takes for the United Nations and the United States government to approve refugee status is 18 to 24 months.

Read the sources for "Ten Myths About Immigration."
Teach about immigration myths.
Support students from immigrant families.