



Lisa Duran
lisa.duran@quarles.com
602-229-5225

The Illegal Immigration Issues: Are Schools Entering the Front Line of the Debate?

Lisa D. Duran
Quarles & Brady, LLP

Senate Bill 1172 (Introduced during the First Regular Session 2009)

- **To the extent permitted by Federal Law," the** Department of Education would be required to collect data from school districts on students who are "aliens who cannot prove lawful residence in the United States."
- The Department of Education would be required to report to the Governor, Speaker of the House of Representatives and the President of the Senate on or before December 15th of each year.

Senate Bill 1172 (Introduced during the First Regular Session 2009)

- The report would include the data collected from the school districts and information about the "adverse impact" of the enrollment of students who cannot prove lawful residence in the United States, a detailed estimate of the total cost to Arizona taxpayers for the education of "**students who are not citizens of the United States**," including a separate detailed estimate of the total cost to Arizona taxpayers for the education of "students who cannot prove lawful residence in the United States."
- The Superintendent of Public Instruction would be authorized to withhold state aid from any non-compliant school district.

How Would it Work?

- Schools would require parents to provide proof that their children are in the United States legally
- Children whose parents fail to provide documentary proof that their children are in the United States legally would be assumed to be undocumented
- Schools would not turn away students whose parents do not provide proof that their children are legally present in the United States

Can school districts require proof that students are legally here now?

No. Public school districts are political sub-divisions of the state and have only the powers granted to them by the legislature, expressly or by implication.

Pros

- Gives the Arizona Legislature the tools to find out how much educating undocumented immigrants costs Arizona taxpayers
- The data collected can be used by school districts to seek federal reimbursement for the costs associated with educating undocumented children

Cons

- Creates a substantial paperwork burden on schools
- Unclear how a student would "prove" lawful residence in the United States
- Difficult for young U.S. citizen children of undocumented parents to prove citizenship
- Deters undocumented parents from enrolling their children in school
- Potential for discriminatory application
- Federal law prohibits schools from asking a student's immigration status (*Plyler v. Doe*)

What does *Plyer v. Doe* say?

- It is a violation of the 14th Amendment's Equal Protection Clause to deny undocumented school-age children a free public education
- Undocumented school-age children are in the United States through no fault of their own
- Denying school-age children access to a public school education could doom them to "a permanent class of undocumented resident aliens."
- The state's interests in (1) protecting the state from an influx of illegal immigrants; (2) relieving the state of the added cost of educating undocumented children and (3) the state's claim that undocumented children are less likely to put their education to productive social or political use within the state were not substantial enough to justify the denial of public education to undocumented children

What do other states do?

- **New Jersey--The New Jersey administrative code prohibits barring any student from public elementary and secondary schools. According to the New Jersey Department of Education, this rule prohibits school districts from requiring students to disclose or document their immigration status or engage in any practices that "chill" or hinder the right of access to public school.**

What do other states do?

- Virginia--The Constitution of Virginia provides for a system of free public elementary and secondary schools for all children of school age in the Commonwealth of Virginia. Thus, as long as a child is a bona fide resident, proof of the child's immigration status is irrelevant. Local school boards are not permitted to inquire into, or require documentation to verify, student applicants' citizenship or visa status.

What do other states do?

- Illinois--Schools are required to provide undocumented children the same benefits and services made available to other students. Schools are directed not to reject applications for reduced lunch and/or breakfast programs that do not have the parents' social security numbers. Rather, the parents should indicate on the form that they do not have a social security number.

Other issues faced by school boards across the U.S.

- Minor children whose undocumented parents are detained by Immigration and Customs Enforcement (ICE) after a work site raid or other ICE enforcement operation
- ICE Guidelines for Identifying Humanitarian Concerns Among Administrative Arrestees When Conducting Worksite Enforcement Operations require ICE to identify sole caretakers of minor children prior to an enforcement operation

- Enrolling students in B-1/B-2 (visitor) status
- Students are legally present (and are "documented"), but the immigration laws and regulations forbid them from studying
- *Plyler v. Doe* and students who volunteer that they are in B-1/B-2 status

- Provision of services to undocumented students from school districts and local government agencies
- Primary and secondary education is not a "Federal public benefit" for purposes of 8 U.S.C. § 1611(a)
- How central is the service to the receipt of education?

-
- Education of unaccompanied minors who are undocumented
 - Federal courts have held that refusing education to unaccompanied minors violates the child's equal protection and due process rights
 - The McKinney-Vento Act, which applies to homeless children, may apply to unaccompanied minors who are undocumented
 - Unaccompanied undocumented minors who have been abused, abandoned or neglected by their parents are eligible for Special Immigrant Juvenile Status