

Borders without Walls

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Abstract

Public school districts have a legal obligation to enroll unauthorized immigrants and the children of unauthorized immigrants as students. Children of unauthorized parents in the United States are likely to be U.S. citizens by birth. Public schools may not deny, chill, or discourage the enrollment of unauthorized children. This is Federal law. Yet across the nation, including Indiana, these children have been denied and/or discouraged to enroll in public schools. School districts that require social security numbers and valid driver's licenses or state issued identification effectively build a wall around their school borders. I reviewed each of Indiana's 292 school districts' websites. Forty-nine percent of Indiana school districts requested unlawful information that would prevent or discourage undocumented immigrants from registering their children in school. Ultimately, school boards and school administrators are responsible for the content of the registration process.

Keywords: undocumented, immigrant, children, enrollment, public schools

1. Introduction

Public school districts have a legal obligation to enroll unauthorized immigrants and the children of unauthorized immigrants as students. Children of unauthorized parents in the United States are likely to be U.S. citizens by birth. Public schools may not deny, chill, or discourage the enrollment of unauthorized children. This is Federal law, it is not based on an Executive Order of the Obama administration (42 U.S.C. §§ 2000c-6, 2000d; 28 C.F.R. § 42.104; 5 U.S.C. § 552).

Yet across the nation, including Indiana, these children have been denied and/or discouraged to enroll in public schools. How do schools do that? Schools build walls around their school boundaries through their enrollment and registration policies and practices. Specifically, school districts that require social security numbers and valid driver's licenses or state issued identification effectively build a wall around their school borders. Neither federal nor state law requires that students or their parents or guardians present or have a social security number to enroll in school.

Although a school district has legitimate and lawful reasons to require proof of residency, they don't need to require parents to produce driver's licenses or Social Security cards. It is not possible for immigrants, who do not have a Social Security card and valid immigration status to obtain a valid photo driver's license. Thus, school districts should not require or ask for a child's social security number.

In a landmark case, *Plyler v. Doe*, 457 U.S. 202(1982), the U.S Supreme Court held that once a state has established a program of free education for children within its jurisdiction, it may not deny a free education to a discreet class of children, whether they are citizens or "illegal aliens." The court ruled that to deny a free education to persons solely on the basis of citizenship was a denial of equal protection under the 14th Amendment of the U.S Constitution.

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At issue in *Plyler* (1982) was a Texas statute that withheld from local school district state funds for the education of any “undocumented alien children.” The statute also authorized school districts to deny undocumented immigrant children enrollment in school. For the first time, the Supreme Court held that unauthorized immigrant children are “persons” under the law and are entitled to equal protection under the Fourteenth Amendment. The Texas statute was found unconstitutional and unenforceable.

The Supreme Court, with Justice Brennan writing the majority opinion ruled that to deny education benefits to unauthorized immigrant children was to impose a lifetime hardship on these children, who are not even accountable for their illegal status. Justice Brennan noted that these children were powerless to change their own status or the conduct of their parents. The Court ruled that the Texas statute was not rational under the D.D. Constitution, 14th Amendment (*Plyler*, 1982).

Further, the high Court acknowledged that like all people who enter the United States unlawfully, these children are subject to deportation. But, there is no assurance that a child subject to deportation will ever be deported. The Court noted that an “illegal entrant “might be granted Federal Permission to continue to reside in the United States. States have no legal authority related to deportation and cannot justify denial of education on the basis of state power (*Plyler*, 1982).

The problem of schools putting up barriers that chill, discourage, or deny enrollment has been the subject of litigation, attorney general investigations, and state department of education review. In 2011, and again in 2014, the U.S. Attorney and the Secretary of Education issued guidance to school administrators that explicitly said that while schools have a right to establish a child’s residency (the child lives within the school boundaries), they do not need parents to provide social security numbers or cards nor do they need driver’s licenses to prove their residency (Lhamon, Rosenfelt, & Samuels, 2014)

The Education Department’s Office for Civil Rights issued its guidance letters in response to a growing number of complaints related to enrollment policies and practices in Ohio, North Carolina, Colorado, Washington D.C., Louisiana, and other states. In Georgia, the Justice Department assessed the enrollment policies of more than 200 school districts and assisted them in changing their enrollment procedure to comply with the law (Lhamon, Rosenfelt, & Samuels, 2014

The U.S. Department of Justice (DOJ)/U.S. Department of Education (DOE) document of May 8, 2014 also made clear that “while a district may restrict attendance to district residents, inquiring into students’ citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district. A district should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school” (Lhamon, Rosenfelt, & Samuels, 2014, p. 2).

Importantly, the DOJ/DOE memorandum states “school districts that either prohibit or discourage, or maintain policies that have the effect of prohibiting or discouraging children from enrolling in schools because they or their parents/guardians are not U.S. citizens or are undocumented may be in violation of federal law”(Lhamon, Rosenfelt, & Samuels, 2014, p. 2). Indiana, like most states (to be in compliance with Federal law-the Secure ID) has various requirements in order to get and maintain a valid driver’s license or nondriver’s state issued photo identification card. It is not possible for unauthorized immigrants who do not have a social security card and valid immigration status to obtain a valid photo driver’s license or a non-driver’s state issued photo identification card (Department of Motor Vehicles [DMV], 2017).

Six school districts in New Jersey were sued in 2014 by the American Civil Liberties Union of New Jersey (ACLU-NJ) for asking parents to produce a valid driver’s license or valid government issued identification as part of the school district’s registration process. The ACLU- NJ lawsuit against the schools complained that the schools’ enrollment/registration process and policy violated the 14th Amendment equal protection clause of the U.S. Constitution and state law (Hubbard, 2016; McGlone, 2014).

The ACLU-NJ asserted that the driver’s license and state issued identification requirements prevented the enrollment of immigrant students by requiring identification documentation that a person without a verifiable Social Security number or valid immigration status could not obtain (Hubbard, 2016; McGlone, 2014).

All of the six school districts promptly (within days) entered into a settlement agreement whereby they agreed to stop requiring parents to show driver's licenses or state issued identification as part of the enrollment registration process. The Superintendent of one of the districts, Dr. Scott R. Rocco said, "we immediately clarified our position, revised our website and updated our registration forms to assure there is no confusion, and our legal counsel was able to promptly resolve the issue with the ACLU's attorney" (Makin, 2016).

It is important to note that the New Jersey schools notified parents via their website and/or letter who were seeking to participate in the school enrollment/registration that they were required to provide certain documentation, including a valid driver's license or state issued identification to the school for their registration appointment (Hubbard, 2016). It should not be forgotten that all 50 states have compulsory education laws. The Indiana compulsory school attendance law requires attendance and requires the school administrations to ensure that children of compulsory school attendance age are enrolled. IN-20-33-2-29. This includes children of unauthorized immigrants.

2. Methodology

Beginning in October 2016, through March, 2017 I reviewed the home web page of every public school corporation listed on the Indiana Department of Education's (IDOE) website. The purpose was to assess the legality of each school district's enrollment and registration processes and requirements. All of the data collected was available on the school districts' website. All 292 traditional public schools (no charter schools) in the state of Indiana were included in this study.

I reviewed each school's website until I found information to parents about enrollment and registration. I quickly learned that there was a wide range of accessibility related to locating information about how to enroll a child in a school. Typically, I spent 20 minutes to half an hour reviewing each school website. Although on many occasions I spent an hour finding, reading, and then recording my findings. Verification of the data involved double-checking and organizing it and evaluating the research. Conclusions are only valid to the degree that data are accurate (Creswell, 2013).

Schools in Indiana require parents or guardians of new students to the district to go to the school their child will attend and bring a birth certificate (or acceptable alternative), immunization records and proof of residency. Once at school with documents in hand, parents or guardians complete a registration form and several other documents. Most school registration forms are now online and are either completed at the school or online before (often called preregistration) parents or guardians actually go to the school for registration.

3. Results

All 292 Indiana districts are included in this study

1. 105 (49%) school districts did require either a valid driver's license or state issued identification card and/or social security card or number.
2. 110 (51%) school districts did not require either a social security number or card nor do they require a valid state issued identification card or valid driver's license.
3. 77 school districts did not provide enough information on their website to allow me to determine whether the district requires a valid driver's license or state issued identification card or a social security number or card. Thus, these districts were dropped from the study for purposes of calculating percentages.

Data from 215 of the 292 Indiana school districts in the study were analyzed. Forty-nine percent (49%) of Indiana school districts requested unlawful information that would prevent or discourage undocumented immigrants from registering their children in school.

4. Discussion

The law is very clear that public school districts cannot legally ask for information or documentation that would reveal a parent or child's social security number or immigration status as a requirement for enrollment. The obvious elephant in the room is why do schools continue prohibited practices that are illegal. Are schools knowingly engaging in unconstitutional activity to keep out children of unauthorized immigrant parents? Or are schools perhaps ignorant of the law?

Here are some possible reasons:

1. Yes, school administrators and school board members who make policy may not be aware of the law related to school enrollment and registration. If parents have not complained or brought the legal issues discussed in this paper to school officials' attention, the district might be operating in the dark. But, ignorance is not a legal defense for a school district. Of course, why would a parent risk deportation to change and correct an unlawful enrollment process. Best to move on and look for another school district that is more flexible in enrolling undocumented parents' children.
2. Current school administrators have not been involved in the school enrollment process. They did not participate in developing enrollment and registration policy. In other words, school administrators (and school board members) inherited policy and practice and they have continued to execute school policy and practices that place legal and practical obstacles in the way of immigrant children enrolling in school. In other words, there has been no official review of the districts' enrollment and registration process while the current school administrators have been employed by the district.
3. School staff handle the actual registration of students. Secretaries and school counselors ask for and review requested documents and use the school's "check off list" to record what documentation parents have brought with them to school. Again, administrators have not been in the enrollment "loop" and did not realize anything was wrong with how the school enrolled new students.
4. School administrators have relied on commercial vendors that provide cloud based k-12 student information systems online. These vendors provide, variously, school registration management systems, including online applications, new student enrollment, and annual student registration designed specifically for pre k-12 public schools. This is a billion-dollar industry.

These vendors offer customized online forms with administrative and parent portals. The school administrator's portal allows for the review, editing, and managing of data. These systems have streamlined the enrollment and registration process and saved schools a considerable amount of money. Schools are provided with online enrollment forms and schools choose from a menu of various student information. The registration forms that I have reviewed frequently request a student's social security number. My review of these online registration forms revealed that only a few school districts have chosen not to include the social security item from the vendor's menu of possible student information.

Administrators appear to have decided to leave the request for a social security number (mostly for students, but sometimes for parents, or both) on the registration form instead of editing it out of the form. But, it is clear that parents are not informed that they do not need to provide a social security number in order to enroll their child in school. Further, parents are not informed how the social security number will be used by the district.

Ultimately, school boards and school administrators are responsible for the content of the registration form. Blaming the vendor for the content of the registration form doesn't wash.

5. It is possible that some school districts have intentionally required parents to provide social security numbers and/or a valid driver's license to prevent and/or discourage unauthorized immigrant parents from enrolling their children. There is evidence from this study that suggests some districts are using their enrollment process to "keep out" children of undocumented immigrants.

Consider that Porter County has six school districts. Porter County is adjacent to Lake County. Lake County has several school districts with high percentages of English Learners (EL). There are 16 school districts in Lake County (Indiana Department of Education Compass [IDOE], 2017).

All six Porter County schools require either a valid driver's license or state issued I.D. and/or a social security number. Four of the districts have less than 1% EL. The state average is 4.5%. Portage and Valparaiso have 1.1% and 2.3% respectively. Looking at the percentage of EL students in a district can serve as a "rough" gauge of a district's population of unauthorized immigrant parents and children (IDOE, 2017).

All six of the Hamilton County school districts require parents to produce a valid driver's license or state issued I.D. and/or a social security number. All of these districts have less than 3% EL students. Hamilton County is adjacent to Marion County (Indianapolis), which has a large EL presence (IDOE, 2017).

In Lagrange County, there are three school districts. Westview school corporation has an EL student enrollment of 21.77 %. Lakeland schools has an EL student enrollment of 7.5%. Neither district requires Social Security numbers or a driver's license. The third district, Prairie Heights does require driver's license, and its EL student enrollment is 1.1% (IDOE, 2017).

Goshen has an EL enrollment of 22% of its district's total enrollment. It does not require a driver's license or a Social Security card. Surprisingly, Monroe County Community Schools (Bloomington, Indiana) requires both a valid driver's license and Social Security numbers, and its EL enrollment is only 2.7%. For such a diverse community, it could be that its enrollment requirements are discouraging parents who are undocumented immigrants (IDOE, 2017). There were 5.1 million U.S. children under the age of 18 living with at least one unauthorized immigrant parent during the years of 2009-2013, according to the Migration Policy Institute (MPI) based on 5 years of Census Bureau data. Almost 80% of these children, 4.1 million were U.S. citizens. However, in most school districts, children under 18 are not allowed to enroll themselves in schools even with U.S. citizenship (Capps, Fix, & Zong, 2016).

MPI estimates that 48,000 children (under 18) in Indiana live with at least one unauthorized immigrant parent. 37,000 of these children are U.S. citizens. These are considered conservative estimates (Capps, Fix, & Zong, 2016). Children of unauthorized parent(s) experience extreme at-risk factors. Consider the following: lower preschool enrollment compared to the U.S. population of 3 and 4-year-old children; 75% of children living with an unauthorized parent live in poverty, yet their poverty, unlike the U.S. population of school age children, persists from childhood to adolescence: 43% live in a household where no one over the age of 14 is proficient in English, putting these children at an extreme disadvantage compared to children of legal immigrant and U.S. citizen status (Capps, Fix, & Zong, 2016).

As if the at-risk factors are not enough of a barrier to children of unauthorized immigrants to succeed in our society, schools that draft and follow unlawful enrollment policies that block these children from attending their schools leave little room for anything but failure in the United States. In fact, America might be creating another pipeline to prison for our children. It would not take much to take down the walls schools have built around themselves. As Justice Brennan said in *Plyler* (1982):

It is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation (p.230).

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