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ABOUT THE SOUTHERN POVERTY LAW CENTER

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.

For more information about

THE SOUTHERN POVERTY LAW CENTER

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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

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' rights to enroll in public school under *Plyler v. Doe*

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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.

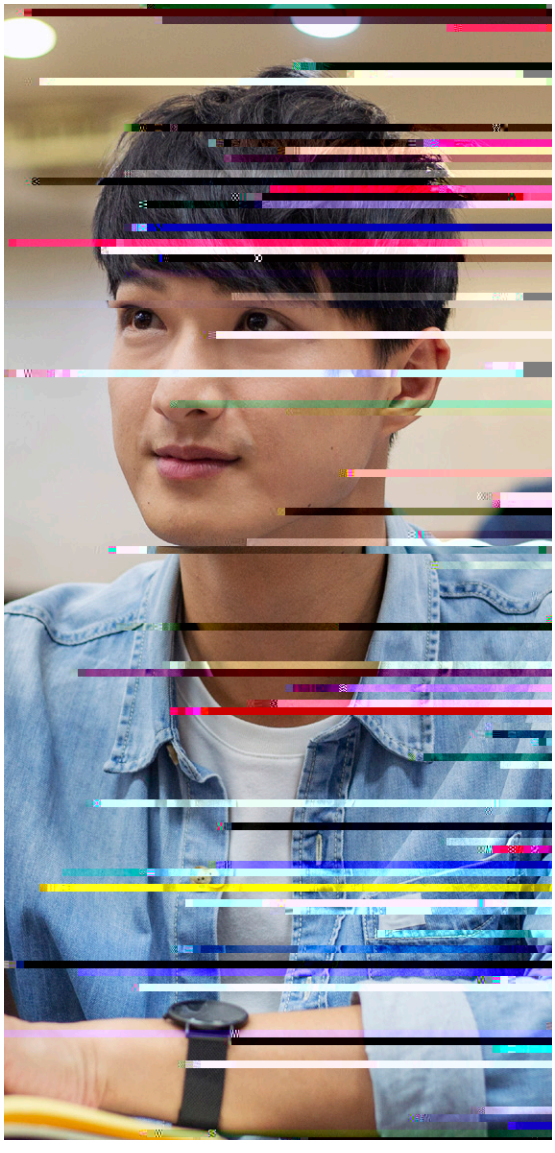
Nearly all federal law on segregation in education contains a presumption of inclusion. Separate and distinct from the racial desegregation obligation rooted in the Fourteenth Amendment to the Constitution and that flows from *Brown* and its progeny, school districts also have to take measures under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

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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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]

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.

dren's schools. This means that school districts must ensure that educators and school sta 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

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

violating the EEOA or Title VI.

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The following subsections explain the ins and

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.

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

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]

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?

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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, p[illegible]ols must allow undocumented an[illegible]immigr[illegible]t students and parents to demons[illegible]dent's age using a variety of relevant [illegible]ocumen[illegible]. Schools should accept any of the f[illegible]lowing d[illegible]uments:[92]

- Birth ce[illegible] (U.S. or non-U.S.)
- International driver's license (for students old enough to drive)
- Passport (U.S. or non-U.S.)
- R

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.

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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]

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 con-

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.

Who can help?

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

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.

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Additional resources, including sample letters and legal resources, can be found at

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