

Immigration and Homeless Student Issues

Steve Williams
Bobby Truhe
Harding & Shultz
(402) 434-3000
schoollaw@hslegalfirm.com

H & S School Law
@SteveisEsteban
@btruhe





So, what's the law?

- *Plyler v. Doe*, U.S. (1982): undocumented children have constitutional right to free public education
- *Vale v. Superior*: Nebraska schools must ascertain whether student is a resident of the district
 - Not to be confused with “citizenship”

What do I do?

- **DO**
 - Follow state documentation and examination laws
 - Ask for proof of residency such as addressed mail, utility bills, pay stubs, etc.
- **DO NOT**
 - Ask for a green card, drivers' license, state ID card, or social security #

If no residence, homeless?

- Could be both “resident” and “homeless”
- 79-215(3): “A school board shall admit any homeless student upon request without charge.”
- McKinney-Vento: student may enroll with no proof of residency

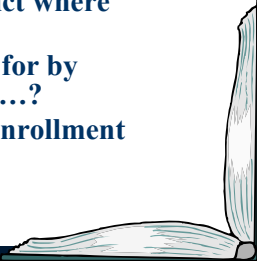
Homeless – Federal Def.

- **Lack a fixed, regular, and adequate nighttime residence**
- **Includes:**
 - Living with family or in motel
 - Abandoned
 - Awaiting foster care
 - Living in cars, parks, etc
 - *Migratory children*
 - Abused, homeless, not yet in system
 - Aged out of foster and homeless

McKinney-Vento Homeless Ass. Act

42 U.S.C. §11431 *et seq.*

- **Rights of Homeless students**
 - Right to remain in school of origin
 - Right to attend district where present
 - Transportation paid for by district of origin—so...?
 - Right to immediate enrollment (without records)
 - Liaisons



Citizenship Does Not Matter

- ***Wilson* (Cal, 1995):** state law required schools to verify, refuse enrollment, and report violations of enrollment verification
- **Court:** violates *Plyler*
- ***Plyler*-plus:** schools should not “chill” right to education
 - *Penn. Dept. of Ed.*: don’t ask for SSN

Citizenship Does Not Matter

- Beware of Title VI and IV claims for discrimination
- DOJ/OCR 2011 Dear Colleague Letter: failure to follow *Plyler* can be race, color, and/or national origin discrimination
- Fed Law: can't conceal/harbor those in the country illegally
- *Plyler*: can't deny access

“Survey says!”

**ENROLL
THE
STUDENT**

Practical Considerations

- Student entitled to special education services
 - Have “guardian” sign Rule 19 Stmt.
 - Don't delay services—student has a constitutional right to education
 - After state involvement, student may remain yours for special education
- Participation in extracurriculars
- Procedural rights for discipline

Practical Considerations

- **Do not make a report to ICE or Homeland Security**
 - Follow district's policy on law enforcement investigations in school
 - Feds have to follow *Plyler*
 - Follow student records policies
- **State enrollment records and examinations are still applicable...**

Enrollment Documentation

- **79-214(2): physical/vision exam**
 - Right to refuse by “parent”
 - Must inform of low-cost options
- **79-217: immunization**
 - Right to refuse by “parent”
 - Must inform of low-cost options
 - Doctor's exception if danger to child
 - Religious exception

Enrollment Documentation

- **43-2007: birth certificate**
 - Within 30 days of enrollment, must provide (a) “certified copy” of BC or (b) “reliable proof” of student's ID and age and an affidavit stating why BC is unavailable
- **Failure to comply with (a) or (b):**
 - Send 10-day compliance notice
 - Call law enforcement if no compliance

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