

Educational Equity and Rights: The Responsibilities of California's Public Schools towards Immigrant Students and Communities

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Abstract

Immigration enforcement efforts have become increasingly intrusive and arbitrary in Latino-origin communities in the U.S. As a result, there are very real possibilities that schools which serve large Latino populations may be affected by immigration enforcement activities (also known as "raids") in their communities. This article offers suggestions and recommendations on how California schools can be proactive in protecting immigrant children and parents from undue scrutiny and intimidation while on school grounds.

The impact of immigration in the United States is a hotly contested topic in the political arena and the media. By extension, this debate about immigration has had a significant effect on the public school system and the relationship between school officials and immigrant families and communities. In this article, we briefly examine the historic Plyler v Doe ruling of 1982 which protects the rights of immigrant children in our public schools, regardless of legal status, as well as review policies that school districts in the U.S. are instituting to deal with the increasingly real possibility that federal immigration enforcement operations may psychologically affect students or parents in the deportation process (Olivos, 2007). We also make recommendations about protocols that school districts could (and should) implement to deal with the consequences of immigration enforcement operations on the school grounds and in communities served by those schools.

Immigrant Children in U.S. Public Schools

While there is no definitive data on the subject, it is widely accepted that English Learners (EL) in public schools are likely to be immigrants or the children of immigrants. The immigrant family in the U.S. is a very complex structure in that it can consist of family members who are of "mixed" immigration

immigration status. A mixed-status household is a family¹ whose members have various immigration statuses. For example, the adults may be naturalized citizens, permanent residents, or immigrants (documented or undocumented), while the children themselves can be either native-born citizens or immigrants (documented or undocumented) (Morse & Ludovina, 1999; Fry, 2009). Passel & Cohn (2009) estimated that in 2008 about 4 million U.S.-born children had at least one undocumented immigrant parent, and another 1.5 million children under the age of 18 were undocumented immigrants. These authors further estimated that 6.8 percent of the K-12 student population in the nation had at least one parent who was undocumented. California holds a unique position in the immigration debate given its place as the country's most populous and ethnically diverse state. Nationally, it is ranked number one in the size of its foreign-born population as well as number one in the percentage of the state that is foreign-born (Migrant Policy Institute (MPI), 2009). Furthermore, it is estimated that 27% of all undocumented immigrants in the nation reside in California. In 2006, the top three countries of origin of these new Californians were Mexico (44 percent), the Philippines (7.6 percent), and China (6.7 percent) (MPI, 2009).

Indeed, it is becoming increasingly clear to educators and policymakers alike that immigrant families are having a significant impact on how schools do business. This impact ranges from the level of support provided to immigrant families to acquaint them with how U.S. schools function to providing their children with a meaningful education which takes into account their native culture and language. Yet, for immigrant children to be successful in U.S. schools, policies and practices must be in place that support not only their academic needs (and strengths) but also their social ones. For immigrant children, this social support comes from providing feelings of safeness—safeness for themselves and for their family members. However, recent increased enforcement efforts (also called “raids”) by U.S. Immigration and Customs Enforcement (ICE) have left many children (whether immigrants or not) living in uncertainty, thus negatively affecting their educational experiences. In one of the most infamous cases to date, for example, ICE officers raided a meatpacking plant in Pottsville, Iowa on May 12, 2008 which resulted in the disruption to students in the local school district. On that day, many Latino students in local schools were summoned to their principals’ offices to be “informed that one or, in some cases, both of their parents would not be coming home because they had been taken into custody by federal law enforcement officers” (Wright Edelman, 2008, ¶1). As a result, many children from immigrant families were left at school while their parents were in custody and most of the school system’s Latino children were absent the day after the raid, though many later returned to the schools (Zehr, 2008a). The Plyler Ruling Undocumented immigrant students are legally obligated, as are all other students, to attend school until they reach the age man mandated by state law; and parents (regardless of their own immigration status) are legally required to send their children to school. In turn, every child—regardless of their immigration status or the immigration status of their parents—has the right to a free public education in a safe and

supportive environment (National Education Association, 2007). This right has been maintained since the Plyler v Doe (1982) Supreme Court decision which established that undocumented immigrant children should be treated in all respects the same as other students, and that school districts can not question students or their parents about immigration status.

The Plyler vs. Doe decision overturned a Texas law that allowed the state to withhold funds from any school district that enrolled undocumented immigrant children. In its opinion, the Court said the state law had violated the equal protection clause of the 14th amendment of the United States Constitution because “the Texas statute imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.” For immigrant students in U.S. public schools, this decision has been a civil rights’ milestone as much as Brown vs. the Board of Education (1954) has been for school desegregation. As a result of the Plyler ruling, some school districts have proactively put forth policies that will maintain the spirit of this law in its protection of undocumented immigrant students. The Washington (state) Office of the Superintendent of Public Schools (National Coalition of Advocates for Students, 2002), for example, advises that its 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 differently 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 students, as this may expose undocumented status.

Additionally, school personnel should be aware that they have no legal obligation to enforce U.S. immigration laws (Zehr, 2008c). The steps taken by the state of Washington, therefore, establishes a useful barometer with which to gauge existing practices in California school districts and individual schools.

Advice to Deal with Consequences of Immigration Raids

Federal enforcement of immigration laws has become a priority for ICE. However, ICE's guidelines discourage arresting fugitives at schools, hospitals, or places of worship, unless the suspect poses an immediate threat to national security or to the community. The agency encourages the release of nursing mothers, and individuals who are the primary caregivers of children with medical conditions or the elderly. However, these guidelines are discretionary. They also stipulate that immigration agents shouldn't take into custody a child who is a legal permanent resident or U.S. citizen (Zehr, 2008b).

Immigration enforcement operations are portrayed by the Department of Homeland Security as a means by which to deter undocumented immigrants from seeking employment and willing employers from knowingly hiring them, and not as a tool to punish families or children. Indeed, thus far, immigration enforcement agents appear more interested in arresting individuals that could be guilty of immigration violations and identity theft than going after minors. Nevertheless, workplace arrests inevitably affect large number of children and the increased presence of federal immigration officials in local communities has a chilling psychological effect on immigrant parents and children's perceptions of their protected access to public education (Capps, Castañeda, Chaudry, & Santos, 2007; Gorman, 2008).

In March 2007, for example, students and staff at San Pedro Elementary School were disturbed by an immigration raid in San Rafael, California. For three days following this ICE operation, teachers rode buses to ensure that

children were delivered safely to homes, time that could have been spent by teachers preparing lessons. The after-school program at San Pedro turned into counseling sessions, absentee rates soared, and test scores dropped. Students who did make it to school remained distracted as they worried about whether their families would be at home when they returned (Zehr, 2008b). Another ICE raid in June 2007 on a Fresh Del Monte Produce Inc. food processing plant in Portland, Oregon ended in the arrests of 147 immigrant workers, tearing apart families and unsettling local employers (Manning, Loose, & Petty, 2009). This plant is located in an economically disadvantaged area of Multnomah County, Oregon that is home to a high concentration on Latino residents—a fact indicated by the enrollment of Latino students in the elementary schools (Northwest Regional Educational Laboratory, 1999). The National Education Association (NEA) (2007) has offered some best practices advice to school districts to deal with this type of crisis:

- School districts should be proactive in reaching out to immigrant communities and establishing a climate of trust that makes immigrant parents feel welcome.
- Parents or guardians should be notified that their children are entitled to enroll in school even if they and/or the children are undocumented immigrants.
- Communications with immigrant parents should be in a language that they can understand.
- School districts should consider how to deal with emotional trauma in the aftermath of an ICE raid—including eating disorders, disengagement, and other symptoms of post-traumatic stress disorder.
- School districts should adopt a plan for persuading immigrant parents to send their children back to school after an enforcement raid in the community.

The National Education Association advocates for school districts to address these issues by writing policies that clearly explain the procedures. Such a protocol would provide guidance to staff, teachers, principals, and administrators in the event of an immigration enforcement raid in their communities and would send a message to the community that the school has protective policies and is a safe place for all students. Important subjects to address are:

- What arrangements should be made to ensure that a student is picked up by a responsible adult? Schools should require parents to identify more than one emergency contact person and provide addresses, telephone numbers, and other possible means of contact.
- What would an education employee do if a student is stranded at school because the parents have not pick the student up?
- Whether, and under what circumstances, should an education employee drive a student home, and what actions should be taken if there is not a responsible adult at home?
- What arrangements should be made if a student cannot return home because the student would be alone there?
- At what point should child protective services or the police be called, and who should make that decision?
- What role, if any, should an education employee play in contacting absent students and their families to secure the students' return to school?
- How should an education employee respond to inquiries and concerns expressed by parents in a crisis situation?

Likewise, the National Coalition of Advocates for Students (2002) recommends that school personnel should not cooperate with immigration enforcement officers in any manner that jeopardizes immigrant students and their right of access. The school principal should meet with the immigration enforcement officers in the front office with a credible witness present and request to see a legal warrant.

If a warrant is presented, the principal should determine that it (a) lists the school by its correct name and address; (b) lists students by name; (c) is signed by a judge; (d) is less than ten days old; and (e) is served by an immigration enforcement officer with proper identification. To protect other students in the school, the principal should bring the officials to the office and request that they remain there while the named student(s) is brought to them. The principal should immediately inform the District Superintendent and the District Legal Counsel.

The privacy rights of undocumented immigrant children and the children of undocumented immigrant parents are protected by the Family Educational Rights and Privacy Act (1974). This statute prohibits school districts from disclosing the education records of any student without parental permission. "Education records" are broadly defined to include records dealing with a child's academic performance and personal information about the child and the child's family. The only exception to this prohibition is if the school district is served a lawfully-issued subpoena.² And finally, school districts can discourage communication to immigration enforcement officers initiated by school personnel concerning the real or perceived immigration status of the students or the students' parents. All requests by immigration officials for consent to enter a school to search for information or to seize students could initially be denied, and immediately communicated to the school principal and the superintendent's office.²

Conclusion

While immigrant parents send their children to school and contribute in many ways to the economy and the culture of our country, educators and school personnel should proactively work to assure that schools continue to respect the constitutional right to equal opportunity, where all students can develop their own potential. These efforts include maintaining a welcoming environment for immigrant students and their families, and being sensitive to the concerns of immigrant

To provide a safe and supportive environment, the schools need to assure the privacy of the students and their families by avoiding the disclosure of educational records and any personal records without parental permission. This protection of privacy will foster mutual trust between the families and the school personnel.

The presence of federal immigration officials in local communities has a harmful emotional effect not only on parents but on children as well. In this anti-immigrant climate, educators should only expect that ICE will step-up its operations and conservative sectors of society will continue to increase their efforts in attempts to pass laws to demonize and psychologically harm immigrants and their children (Laglagaron, Rodríguez, Silver, & Thanasombat, 2008). These actions will inevitably affect large numbers of Latino immigrant children in our public schools, or those with immigrant parents. While there are those who would advocate ignoring the needs of these children, well-meaning educators have an opportunity to develop policies and practices that will assure these children's wellbeing. California schools can be proactive in devising plans to address the humane treatment of students who may have a parent or a family member arrested for deportation and can also deny any request of disclosure that would put their children in jeopardy.

1 For Latinos, the term family does not necessarily imply only parents and children. It can, and often does, include aunts, uncles, cousins, grandparents, and other extended family members.

2 The Privacy Act of 1974, a federal statute not limited to education, may provide additional protection for undocumented immigrant children and the children of undocumented immigrant parents. See Privacy Act of 1974, Pub. L. No. 93-579, §7,88 Stat. 1896 (codified at 5 U.S.C. § 55a note (Disclosure of Social Security Number) (1996).

3 The U.S. Border Patrol, for example, has a policy that requires written approval from the chief patrol agent or the deputy chief patrol agent prior to any enforcement-related activities at schools or places of worship.



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