

# Immigration and New Jersey Public Schools

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# New Jersey: Enrollment/Registration

- **N.J.A.C. 6A:22-3.3 Housing and immigration status**
- (b) Except as set forth in (b)1 below, immigration/visa status shall not affect eligibility to attend school. Any student who is domiciled in the school district or otherwise eligible to attend school there pursuant to N.J.A.C. 6A:22-3.2 shall be enrolled without regard to, or inquiry concerning, immigration status.

# Civil Rights Act of 1964

- Title IV: Prohibits discrimination on the basis of race, color, national origin [...] by public elementary and secondary schools. (42 U.S.C. § 2000c-6)
- Title VI: Prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. (42 U.S.C. §2000d)
  - Districts may not use criteria or methods of administration that have the effect of subjecting individuals in a protected class to discrimination.

# Plyler v. Doe, 457 U.S. 202 (1982)

- Invalidated a Texas statute which withheld state funds for education of children not “legally admitted” into the United States and authorized local school districts to deny enrollment to such children.
- Violations of the Equal Protection Clause of the Fourteenth Amendment

## Plyler v. Doe, con't.

- Basis for the legislation: Increases in the population from immigration of Mexican nationals had “created problems” for the public schools which were exacerbated by the special education needs of immigrant Mexican children. (Fiscal Integrity)
- District Court found that State and Federal funding was based on the # of children enrolled and the increase in enrollment was primarily attributable to legal residents.

## Plyler v. Doe, (District Court)

- The Court noted because of the manner of the funding mechanism, barring undocumented children may eventually save money but it would not necessarily improve the quality of education.
- “The illegal alien of today may well be the legal alien of tomorrow.”

# Plyler v. Doe, (Supreme Court)

- State's Position: Undocumented aliens are not persons “within the jurisdiction” of the State and therefore have no right to the equal protections of Texas law.
  - Rejected outright. “That a person’s initial entry into a State, or into the United States, was unlawful, and that he may for that reason be expelled, cannot negate the simple fact of his presence within the State.”
  - Held. Plaintiffs may claim the benefit of the 14<sup>th</sup> Amendment’s guarantee of equal protection.

# Plyler v. Doe, con't.

- Persuasive arguments support the view that a State may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct. However, children of those illegal entrants are not comparably situated.
- Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental concepts of justice.
- Today, [education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.



# Equal Protection

- State/Dissent's arguments: the undocumented status of these children *vel non* establishes a sufficient rational basis for denying them benefits that a State might choose to afford other residents.
- The State has no power with respect to the classification of aliens and is simply borrowing the classification (undocumented alien) from the Federal Government.
- Held. To justify the borrowed classification, the State must demonstrate that the “classification is reasonably adapted to the purposes for which the state desires to use it.”

# State's Justification/Court's Findings

- Court determined that Mr. White wasn't doing his job and discerned three colorable state interests.
  1. State may seek to protect itself from an influx of illegal immigrants. (Statute does not offer an effective method of dealing with an urgent demographic or economic problem and charging tuition to undocumented children constitutes a ludicrously ineffectual attempt to stem the tide of illegal immigration.)
  2. Undocumented students are appropriately singled out because of the special burdens imposed on the State's ability provide high-quality public education (No evidence to support that excluding them will improve the overall quality of the education of the State. Even if the case were that barring some number of students from the school system would improve the quality, the State must support its selection of this group of students.)
  3. Unlawful presence in the US renders them less likely than others to remain within the boundaries of the State and put their education to productive and political use within the State. (Assuming this is a legitimate interest, the State has no assurance that any child, citizen or not, will employ the education provided by the State within the confines of the State's borders.)

# Deferred Action for Childhood Arrivals

- Federal government program which allows people brought to the U.S. illegally as children, the temporary right to live, study and work. Those applying must be students or have completed school or military service. If they pass vetting, action to deport them is deferred for two years with a chance to renew.
- Impact then is more exigent upon parents of students than students themselves.

# Immigration & Customs Enforcement (ICE)

- Policy Memorandum: Enforcement Actions at or Focused on Sensitive Locations (10/24/11). Designed to ensure that enforcement actions do not occur at nor are focused on sensitive locations.\*
- General Rule: Any planned enforcement action at or focused on a sensitive location must have prior approval unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location in the case of exceptions, or (c) prior approval has been obtained.

\* Not intended to categorically prohibit lawful enforcement operations where there is an *immediate need* for enforcement action.

# Sensitive Locations

## ➤ Schools

Pre-school, primary, secondary, post-secondary and other institutions of learning such as vocational/trade schools.

## ➤ Hospitals

## ➤ Places of worship (including buildings rented for the purpose of religious services)

## ➤ Funerals, wedding or other public religious ceremony

## ➤ Site of a public demonstration (march/rally)

## ➤ Exigent Circumstances

- Action involves a matter of national security/terrorism
- Imminent risk of death, violence or physical harm to person or property
- Involves the immediate arrest or pursuit of a dangerous felon, suspected terrorist or other individuals presenting imminent risk to public safety
- Imminent risk of destruction of evidence which is material to an ongoing criminal case

# Non-Covered Actions

- Obtaining records/similar materials from officials or employees;
- Providing notice to officials or employees;
- Serving subpoenas;
- Student and Exchange Visitor Program compliance and certification visits;
- Participating in official functions or community meetings.

# Enforcement Actions

Other law enforcement actions have led officers to a sensitive location in the case of:

- Arrests
- Interviews
- Searches
- Surveillance for purposes of the above three other actions.



§287(g) of The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Allows the Dept. of Homeland Security (DHS) to enter into formal written agreements (MOAs) with state or local police departments and deputize selected officers to perform the functions of federal immigration agents. Supervised by ICE.

# §287(g) Memorandum of Agreement

- ✓ Interview individuals to ascertain their immigration status
- ✓ Check DHS databases
- ✓ Issue immigration detainers to hold individuals until ICE takes custody
- ✓ Enter data into ICE's database and case management system
- ✓ Issue a Notice to Appear (charging document that begins the removal process)
- ✓ Make recommendations for voluntary deportation in place of formal removal proceedings
- ✓ Make recommendations for detention and immigration bond;
- ✓ Transfer noncitizens into ICE custody.

# Models of Agreements

- Jail enforcement model. Deputized officers may interrogate alleged noncitizens who have been arrested on state or local charges and place immigration detainers on those thought to be subject to removal.
- Task force model. During daily activities deputized officers who encounter alleged noncitizens may question and arrest individuals they believe have violated federal immigration laws.
- Hybrid model.

# New Jersey's 287(g) MOAs

NEW JERSEY	Cape May County Sheriffs Office	Jail Enforcement	2017-04-10
NEW JERSEY	Monmouth County Sheriff's Office	Jail Enforcement	2016-06-08
NEW JERSEY	Salem County Sheriff's Office	Jail Enforcement	2016-12-08

# Training and Paying for §287(g)

- U.S. Citizen
- One year of law enforcement experience
- Four week training program
- Re-training every two years
- ICE covers training costs

## Local Government Costs (SROs)

Travel; housing; per diem for officers during training; salaries; overtime and other personnel costs; and administrative supplies.

# School District Considerations

## ➤ FERPA (20 U.S.C. §1232g; 34 C.F.R. Part 99)

“Directory information” may be disclosed without parent’s consent but district is required to permit parents/students a reasonable amount of time to request that the school not disclose directory information.

- Student Exchange and Visitor Information System (8 C.F.R. 214.3(g) verification that student hasn’t overstayed visa. (F-1 or M-1)
- Judicial order/lawfully issued subpoena
- Health and safety concern
- Student engaged in a crime of violence or sex offense
- Patriot Act: Added exception to mandate disclosure of educational records to a federal AG through judicial order (suspected terrorist activities)

# School District Considerations

- Detained parents: School districts are not required to release students into the custody of ICE. School districts should ensure that children are only released to authorized personnel. (Check Emergency cards.)
- Fingerprinting for volunteers
- Verification documents (birth certificates, social security cards, driver's license)

- What do your administrators/staff do when met by an ICE official at their door?



# Thank You

## Questions?



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