



Student Immigration Issues in Texas Public Schools

Immigration policy is once again at the center of public debate. With the incoming federal administration, changes may include rescission of executive orders on enforcement or sanctions against so-called sanctuary cities. While these changes may have significant implications for students and their parents, such changes are unlikely to affect public schools directly. Since 1982, the United States Supreme Court has held that children present in the U.S. are entitled to enrollment in public schools, regardless of their immigration status.

In the landmark Supreme Court case *Plyler v. Doe*, the Supreme Court struck down a Texas statute that allowed school districts to deny admission to children without a legal immigration status and withheld state funds from local school districts for the education of children who were not legally admitted into the U.S. The Court said the statute violated the Equal Protection Clause of the Fourteenth Amendment because it allowed discrimination without a rational basis. The court acknowledged that undocumented resident aliens were not a protected class, and education was not a fundamental right, requiring a compelling governmental interest; nevertheless, the Texas statute imposed a lifetime hardship on a discrete class of children who were not personally responsible for their circumstances.

As the Court observed, the deprivation of public education differs from the deprivation of any other governmental benefit. Education plays a pivotal role in maintaining our society. Loss of education takes an inestimable toll on the social, economic, intellectual, and psychological well-being individuals, and poses an obstacle to individual achievement. *Plyler v. Doe*, 457 U.S. 202 (1982). Consequently, a school district may not exclude a student based solely on the student's undocumented immigration status. See Tex. Educ. Code § 25.001(b) (describing the residency requirements for admission to Texas public schools).

Immigrants versus Foreign Students

The *Plyler* decision applies to *immigrants*, meaning students who are present in the U.S. with the intent to remain regardless of their documentation status. The decision does not speak to the enrollment rights of non-immigrant foreign nationals, who may also be enrolled in public schools through other means, such as foreign exchange programs, F-1 student visas, or as the children of foreign workers or diplomats. For more information, see TASB Policy FD.

Foreign exchange programs: Foreign exchange students attend U.S. schools pursuant to federal J-1 visas. A foreign exchange student is entitled to admission to a Texas public school if the student is placed by a nationally recognized program with a family that resides in the district, unless the district has received a waiver from the commissioner of education under Texas Education Code section 25.001(e). Tex. Educ. Code § 25.001(b)(6).

Student visas: Texas schools are also permitted to enroll foreign students on federal F-1 visas. The F-1 visa allows a student with a permanent foreign residence to enter the U.S. as a full-time student in an accredited program or course of study that culminates in a degree, diploma, or certificate. The enrolling school must be authorized by the U.S. government to accept international students.

For many years, Texas school districts could not accept students on F-1 visas, because by law, a student on that classification on visa must pay tuition to the institution to cover the full cost of the student's education, and Texas public schools did not allow for tuition at such a rate. In 2013, state law changed. Under current law, if a student is required, as a condition of obtaining or holding the appropriate U.S. student visa, to cover the cost of the student's education provided by the district, a school district may accept tuition in an amount equal to the full unsubsidized per capita cost of providing the student's education for the period of the student's attendance at school in the district based on guidelines set by the commissioner. A district may not accept tuition in an amount greater than the amount computed under the commissioner's guidelines unless the commissioner approves a greater amount as a more accurate reflection of the cost of education to be provided by the district. The attendance of a student for whom a school district accepts tuition is not counted for purposes of allocating state funds to the district. Tex. Educ. Code § 25.0031.

In Texas, enrolling students with F-1 visas is optional for each district. A school district wishing to enroll students with F-1 visas must comply with the federal Student and Exchange Visitor Program (SEVP) under the Department of Homeland Security. Detailed information regarding SEVP can be found at ice.gov/sevis/.

Enrollment Procedures

Consistent eligibility standards: All students, including foreign students and immigrants, must meet the same state eligibility requirements for public school admission. According to the Texas Education Code, a school board may require evidence that a person is eligible to attend the public schools of the district at the time the board considers an application for admission, and the board may make reasonable inquiries to verify a student's eligibility for admission. Tex. Educ. Code § 25.001(c).

Title IV of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin (among other characteristics) by public schools. Similarly Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin (among other characteristics) by recipients of federal funds. 42 U.S.C. §§ 2000c-6, 2000d. In addition, Title VI regulations prohibit exclusion from a benefit or the use of criteria or methods of administration with the effect of subjecting individuals to discrimination or defeating the accomplishment of the program objectives because of a person's race, color, or national origin. 28 C.F.R. § 42.104 (a)-(b).

These anti-discrimination laws have been interpreted to limit the types of documentation public schools should request or require in the course of enrolling new students. The limitations exist to avoid having a chilling effect on the enrollment of eligible students. Moreover, schools should avoid creating or keeping unnecessary education records that reflect a child's immigration status. The U.S. Department of Education's Office for Civil Rights enforces both Titles IV and VI. OCR will investigate and hold districts responsible for practices that subject students to discrimination or impair their access to educational programs based on these factors. OCR's most recent guidance on the subject was published in a Dear Colleague Letter on May 8, 2014, www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf.

Translated forms: Enrollment forms should be available in translation to assist parents with limited English proficiency, in accordance with Title VI and the Equal Educational Opportunities Act, 20 U.S.C. § 1703. Enrollment procedures should not create roadblocks to enrollment for students due to immigration status, and students or parents should not be subjected to additional inquiries based on perceived national origin.

High school graduates: Texas law requires school districts to admit all individuals who meet the residency requirements set forth by law and are over five and younger than 21 years of age to complete the requirements of a high school diploma. Tex. Educ. Code § 25.001(a), (b). The benefits of the Foundation School Program are not available to students who have already graduated from high school. Tex. Educ. Code § 42.003(a). Consequently, a district may exclude a foreign student who has already obtained a high school diploma. On the other hand, a student who has received a high school equivalency certificate (GED) is entitled to enroll on the same basis as a student who has not graduated from high school. Tex. Educ. Code § 29.087(h). Unfortunately, it is not always clear whether a degree obtained by a foreign student in his or her home country equates to a high school diploma. This is a matter of local interpretation. Districts should apply their local interpretations consistently to avoid claims of unfairness or discrimination.

Proof of residency: Proof of residency may be required for all enrolling students. *Martinez v. Bynum*, 461 U.S. 321 (1983). Texas law states that a student may be required to show proof of residency. Tex. Educ. Code § 25.001(c). TEA provides examples of methods to verify residence, including seeking utility bill receipts or lease information or verifying with responsible district

personnel that the applicable residence is within the boundaries of a district. Tex. Educ. Agency, *2016-2017 Student Attendance Accounting Handbook* (Nov. 2016) (Section 3.3.1.), tea.texas.gov/Finance_and_Grants/Financial_Compliance/Student__Attendance_Accounting_Handbook/. Many districts provide a list of acceptable documentation in their registration information. For example, most districts accept at least one of the following items as proof of residency: a recently paid rent receipt; a current lease agreement; the most recent tax receipt indicating home ownership; or a current utility bill indicating the address and the adult's name. See policies and regulations at TASB Policy FD.

Proof of residency requirements should not inquire into immigration status or discourage attendance based on immigration status. Students cannot be asked to provide proof of citizenship or immigration status, such as a U.S. passport, green card, or other visa. Nor may schools limit accepted documentation to U.S.-issued identification (like drivers' licenses) for students or parents. In fact, TEA cautions districts against denying admission to any student based on a lack of any particular form of documentation. "Residency is not defined by an address on a driver's license, a signature on a lease, or the address on a utility bill. These are indicators that may expedite verifying residency, but the absence of such indicators is not conclusive that the student is not a resident." To determine if a student qualifies to be listed with the *immigrant* indicator for purposes of PEIMS, the district may confirm the following: the student is between the ages of 3-21, the student was born outside of the U.S., and the student has not had a total (consecutive or nonconsecutive) of three full academic years of education within the U.S. Tex. Educ. Agency, *2016-2017 Student Attendance Accounting Handbook* (Nov. 2016) (Section 3.3.1.), tea.texas.gov/Finance_and_Grants/Financial_Compliance/Student__Attendance_Accounting_Handbook/.

Proof of age and identity: An adult enrolling a child may be required to show proof of the child's age and identity. Again, the accepted documentation should not discriminate based on national origin or immigration status. Foreign birth certificates, baptismal records, and other documentation showing a foreign place of birth must be accepted on the same terms as U.S. documents.

Within 30 days of enrollment, the Texas Education Code requires a parent or other person with legal control of a child to furnish the child's birth certificate or another document suitable as proof of the child's identity as defined by the commissioner in the Student Attendance Accounting Handbook. Tex. Educ. Code § 25.002(a), (a-1). These documents include a birth certificate, a birth statement issued by the Texas Department of State Health Services, driver's license, passport, school ID card, records, report card, military ID, hospital birth record, adoption records, church baptismal record, or any other legal document that establishes identity. Tex. Educ. Agency, *2016-2017 Student Attendance Accounting Handbook* (Nov. 2016) (Section 3.3.3.), tea.texas.gov/Finance_and_Grants/Financial_Compliance/Student__Attendance_Accounting_Handbook/.

The Texas Code of Criminal Procedure has more specific documentation requirements for enrollment of a child under age eleven. The person enrolling a student of this age must provide a certified copy of the child's birth certificate, or other reliable proof of the child's identity and age and a signed statement explaining the person's inability to produce a copy of the birth certificate. This documentation must be provided not later than the 30th day after enrollment or within 90 days if the child was not born in the United States. If the person enrolling a child under age eleven fails to provide this information as required, the school must notify appropriate law enforcement before the 31st day after the person fails to comply. Tex. Code Crim. Proc. art. 63.019.

Social Security Numbers: Students and parents are not required to provide a social security number (SSN). States may collect SSNs only if they have a legal reason to collect the numbers and the numbers are kept confidential. Texas school districts ask for SSNs for purposes of PEIMS. Parents must be informed that providing a SSN for themselves or their child is voluntary and will not affect enrollment. 5 U.S.C. § 552a (note).

Proof of immunization: The person enrolling the child must provide a record showing that the child has met the immunization requirements, is not required to be immunized, or is entitled to provisional admission under Texas Education Code section 38.001. Tex. Educ. Code § 25.002(a)(3). A district can deny admission to a student who is not fully immunized and has not begun the required immunization, unless he or she meets certain exceptions in law. A student is required to be fully immunized against certain diseases such as mumps, measles, and rubella. Tex. Educ. Code § 38.001; 25 Tex. Admin. Code § 97.63. Students who submit an affidavit, signed by a physician, stating that immunizations pose a health risk to the student or someone in the student's home or that the student or the student's parent has a conscientious objection to immunizations are excepted from the immunization requirement, as are members of the armed forces on active duty. Tex. Educ. Code § 38.001(c). The district may admit a student provisionally if the student has begun the required immunizations and continues to receive the necessary immunizations as rapidly as medically feasible. Tex. Educ. Code § 38.001(e). For provisional enrollment, a student must have received at least one dose of each specified age-appropriate vaccination required by the Department of State Health Services. Dept. of State Health Services, *2015-2016 Texas Minimum State Vaccine Requirements for Students Grades K-12* (June 2015), dshs.state.tx.us/immunize/school/default.shtm. In addition, a student who is homeless or in foster care may be admitted for 30 days pending initiation of vaccinations or receipt of vaccination documents. 25 Tex. Admin. Code §§ 97.66(b), (c).

Previous school records: Texas law calls for the parent or legal guardian or the previous school district to provide a copy of the child's records from the school the child most recently attended. Tex. Educ. Code § 25.002(a)(2), (a-1).

Reporting race and ethnicity: PEIMS data collection calls for recording and reporting an enrolling student's race and ethnicity. Such data collection is permissible under federal law, but providing the information should not be mandatory, and the information should not be used for a discriminatory purpose.

Lack of documentation: While the law is very specific about the documentation required for enrollment purposes, a district should not deny a child enrollment solely for failure to provide documentation proving identity or previous school records. 19 Tex. Admin. Code § 129.1(a)-(b). Instead the school district's obligation is to notify law enforcement of the discrepancy, in case the student has been reported missing. Tex. Educ. Code § 25.002(c).

Remember that different rules regarding enrollment apply to students in foster care or who are currently experiencing homelessness. Tex. Educ. Agency, *To the Administrator Addressed: Re: Attendance, Admission, Enrollment Records and Tuition 2016-17* (Aug. 19, 2016), tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Attendance,_Admission,_Enrollment_Records,_and_Tuition_-_August_2016/.

Unaccompanied Immigrant Children

Unaccompanied immigrant children: An *unaccompanied alien child* (UAC) is a child with no lawful immigration status in the U.S. who is under 18 years of age and with respect to whom there is no parent or legal guardian in the U.S. available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

Apprehended UAC: Individuals caught crossing the border illegally from Mexico and Canada are subject to immediate deportation, regardless of age. However, unlike adults, minors attempting to emigrate illegally from Central America (the origin of the overwhelming majority of UAC) are entitled to a hearing before deportation. Unaccompanied children apprehended by Border Patrol while crossing the border are placed in the care of the U.S. Department of Health and Human Services (HHS) while their immigration proceedings are pending. Through the HHS Administration for Children and Families, the Office of Refugee Resettlement (ORR) operates the Division of Children's Services.

Since 2008, the Trafficking Victims Protection Reauthorization Act has required HHS to provide care for unaccompanied children in the least restrictive environment (LRE) that is in the best interest of the children. 8 U.S.C. § 1232(b)(2). The children are served in shelters that offer the LRE in light of their individual needs and security concerns. Unaccompanied children at HHS shelters are in federal custody. They do not attend local public schools, do not integrate into the local community, and remain under staff supervision at all times. Moreover, because the children are technically incarcerated, they are not *homeless* under the McKinney-Vento Act. Although the children are not enrolled in public schools, HHS may contract with local schools to provide educational services.

U.S. Dep't of Educ., *Educational Services for Immigrant Children and Those Recently Arrived to the United States*; U.S. Dep't of Health & Human Services, *Unaccompanied Alien Children Program Fact Sheets I and II*, www2.ed.gov/policy/rights/guid/unaccompanied-children.html.

Release to a sponsor: By law, HHS is obligated to look for a caregiver outside of the shelter setting for each child. An unaccompanied child may be released from federal custody to a sponsor, who is a parent, family member, or other appropriate adult. The sponsor promises to care for the child during the pendency of the child's immigration case. At this point, the child leaves the shelter to reside with the sponsor and is eligible to enroll in local schools.

A sponsorship agreement is not a court order, and a sponsor is not a "person with legal control" over the child under a court order for purposes of enrollment. Tex. Educ. Code § 25.002(a). The absence of a person with legal control under a court order is not a reason to deny enrollment under Texas Education Code section 25.001. As stated, the failure of a prior district or the person enrolling the student to provide the required identification or school records does not constitute grounds for refusing to admit an eligible student. However, if identifying records are not furnished within the 30-day period, Texas Education Code section 25.002(c) requires the district to notify law enforcement and request a determination of whether the student has been reported as missing. Tex. Educ. Agency, *To the Administrator Addressed: Re: Attendance, Admission, Enrollment Records and Tuition 2016-17* (Aug. 19, 2016), tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Attendance,_Admission,_Enrollment_Records,_and_Tuition_-_August_2016/.

Children placed with sponsors will receive specific forms, namely the HHS Verification of Release form. This form may indicate directly or indirectly that the child is subject to an ongoing immigration proceeding. As such, a district may not require a sponsor to share the form, but it may be provided voluntarily. Arguably, in the absence of any other responsible adult providing care for the child, a school district could choose to rely on the sponsor's appointment as an indication that the sponsor stands in loco parentis on behalf of the child.

In some instances, the sponsor relationship may be reinforced through an ORR form—called a Letter of Designation for Care for a Minor—which is completed by the child's parent or guardian back in the home country in order to designate a sponsor in the U.S. Although the form may lack certain safeguards, such as certification by a notary, in the absence of other documentation, such a letter could be equated with a power of attorney. U.S. Dep't of Educ., *Fact Sheet II: Additional Questions & Answers on Enrolling New Immigrant Students*, www2.ed.gov/policy/rights/guid/unaccompanied-children-2.pdf.

Equal Access to Educational Services and Programs

Upon enrollment, students should be granted access to all relevant educational programs and services, including English learner programs, but also special education services, free and reduced price lunch, and other services, as applicable.

Students who do not speak English are entitled to specialized instruction for language acquisition. In addition to Title I funds for educationally disadvantaged students, funds for English language acquisition and recent immigrants are provided through Title III. States can set aside up to 15 percent of Title III grant funds for school districts experiencing a significant increase of immigrant children. Title III encompasses essentially two programs: one for language acquisition and the other to provide support to recent immigrants. Title III is discussed in detail, with technical assistance, online at www2.ed.gov/policy/rights/guid/unaccompanied-children-2.pdf.

U.S. Dep't of Educ., *Schools' Civil Rights Obligations to English Learner Students and Limited English Proficient Parents*, www2.ed.gov/about/offices/list/ocr/ellresources.html.

Access to Student Records

Generally, under the Family Educational Rights and Privacy Act (FERPA), parental consent is required before a school district can release a student's personally identifiable student record information. Limited exceptions may permit a school district to share confidential records with an investigator without parental consent. Exceptions to parental consent include:

- Directory information, as long as parents have been provided annual notice and an opportunity to opt out. FERPA defines "directory information" as information in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. 34 C.F.R. § 99.3. In Texas, directory information is typically established by the local school board at TASB Policy FL(LOCAL). Examples of directory information include student name, address, telephone listing, photograph, honors and awards, dates of attendance, participation in school activities, and weight and height of members of athletic teams.
- Health and safety, if there is an "articulable and significant threat" to the health or safety of the student or of another individual.
- A subpoena, and while normally the district must notify parents before complying with a subpoena, notice is not required if the issuing agency requires the content of the subpoena to remain confidential.

20 U.S.C. § 1232g, 34 C.F.R. Part 99

FERPA does not contain a broad-based exception for law enforcement or immigration activities. Absent a subpoena or other lawful exception to FERPA, a student's personally identifiable school record information may not be released, absent parental consent. Educators have speculated, however, that de-identified statistical information about students theoretically

could be accessed to inform immigration enforcement efforts. Benjamin Herold, *Trumps Anti-Immigration Rhetoric Fuels Data Concerns*, Education Week (Jan. 13, 2017), edweek.org/ew/articles/2017/01/13/trumps-anti-immigration-rhetoric-fuels-data-concerns.html?cmp=eml-enl-eu-news2-RM.

Immigration Enforcement

Best practices: Schools around the country, including Texas, have experienced significant disruption during times of heightened immigration enforcement. School officials who have experienced enforcement actions in their local communities advise the following to minimize the impact of enforcement actions on school operations and the learning environment:

- Set clear protocols for ensuring that students are released to safe homes, even if a parent or parents become the subject of an immigration enforcement action. Be certain that enrollment documents ask all parents to list multiple emergency contacts, including friends and family beyond the child’s immediate household.
- Have a plan, either as part of the district’s regular emergency management plan or a more specialized plan, to work with local social services to determine a safe location for children to wait until an appropriate adult caregiver arrives. If possible, create an environment that is comfortable for students and staff, with opportunities to study, play, and seek counseling or comfort.
- Pursue open lines of communication with the federal, state, or local officials involved in an immigration enforcement action to advocate for the needs of affected students. Despite federal enforcement procedures that call for consideration of any children (including U.S. citizen children) affected by the detention of caregivers, the needs of children are sometimes an afterthought during an enforcement action.
- School attendance is often negatively affected by concerns about immigration enforcement. School officials may need to emphasize to the community that school is a safe place for students. To share this message, school districts may communicate through parent meetings, newsletters and websites, and other means to students and parents that schools do not keep or share records about immigration status and do not play a role in immigration enforcement.
- Out of concern for students’ wellbeing, school employees may be inclined to share information with families about their individual rights in immigration enforcement. For example, school employees may want to hand out “Know Your Rights” pamphlets from nonprofit entities or direct families to local legal aid. School districts as employers and local governmental entities should offer clear direction to staff and the broader community about which communications are relevant to and proceed from the school district versus which communications are produced by and disseminated from other

sources. Distribution of literature from nonschool sources and on-campus meetings of outside community organizations should be accomplished in accordance with district policy. See TASB Policies GKD and GKDA.

- Absent an exception to FERPA, student records other than directory information may not be disclosed without parental consent. Generally, with the exception of information about certain student visas issued to non-immigrant foreign students, student records remain confidential and should not be disclosed to immigration officials. If a subpoena is issued, an exception to FERPA will apply; the school district should respond to the subpoena and ask permission from the issuing agency before informing parents about the subpoena. Tex. Gov't Code §§ 552.026, .114; 20 U.S.C. § 1232g.
- If immigration authorities come to a school seeking access to a child, school employees should respond to the immigration officers on same terms as other law enforcement officers. See TASB Policy GRA(LOCAL). Typically local policy calls for school employees to ask law enforcement officers for verification of identity and legal authority. If the officer has a warrant or similar court order to take a child into custody, school employees should comply with the order. On the other hand, if the officer is simply using the school as a convenient place to conduct an investigation, school employees typically ask the officer to wait until the student has noninstructional time. Federal immigration enforcement policy calls for investigators to avoid using schools and other sensitive locations for enforcement activities, including interviews. U.S. Immigration and Customs Enforcement, Sensitive Locations FAQs, ice.gov/ero/enforcement/sensitive-loc.

In light of the potential for pressure from state or national policymakers, as well as confusion among staff and fearfulness among parents, school officials may need to communicate clearly and frequently to all stakeholders that the role of public schools is as a safe place for learning, not a tool for immigration enforcement.

Impact of Senate Bill 4: In May 2017, the Texas Legislature created a new subchapter in the Texas Government Code, which the media referred to as a “Sanctuary City Ban.” This new subchapter prohibits a local entity or campus police department from adopting or following a policy or pattern of materially limiting the enforcement of state or federal immigration laws. Local entities that are covered by this law include the governing body or an officer or employee of a city, county, special district or a district or criminal district attorney. A campus police department means a law enforcement agency of a public or private institution of higher education. A covered entity may not prevent a peace officer or other authorized individual from inquiring into the immigration status of a person under a lawful detention or arrest, sharing the information with another federal, state, or local governmental entity, and assisting or permitting a federal immigration officer in enforcement activities. A local entity may not refuse to comply with federal detainer requests. Tex. Gov't Code §§ 752.051-.057.

This new subchapter does not apply to a school district or open-enrollment charter school. The subchapter also does not apply to a peace officer employed or contracted by a district or charter school during the officer's employment with the district or charter school or while the officer is performing the contract. In addition, the subchapter specifies that it does not apply to the release of information contained in educational records of an educational agency or institution, except in conformity with the federal Family Education Rights and Privacy Act (FERPA). Tex. Gov't Code § 752.052(d).

Immigration Protests

Because immigration is a controversial and emotional topic affecting public school students and their families, occasionally students are involved in protests or other personal expression about immigration policy. Schools around the nation have found themselves in legal and media controversies when students have expressed themselves in ways that push the bounds of protected free speech and school officials have struggled to respond in ways that balance the competing and legitimate interests of student free speech, equal protection, and orderly school operations.

Student expression, including political or protest speech, is protected by the First Amendment, and may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). A school district may discipline a student for speech that actually causes a substantial disruption or is reasonably forecast to cause a disruption; schools do not have to wait to prove the occurrence of an actual disruption in order to regulate student speech. *See, e.g., Morse v. Frederick*, 551 U.S. 393 (2007) (upholding discipline of student who displayed a poster with pro-drug message at school event); *Bell v. Itawamba County Sch. Bd.*, 799 F.3d 379 (5th Cir. 2015) (upholding discipline of student whose off-campus rap song threatened violence against two school employees).

Students' free expression rights are not boundless, however. Students do not have a First Amendment right to disrupt school operations by scheduling a walk-out. *Murray v. West Baton Rouge Parish Sch. Bd.*, 472 F.2d 438 (5th Cir. 1973). Schools may prohibit and discipline student speech that is lewd, vulgar, or offensive. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). Schools may also prohibit student speech that infringes on the rights of other students, for example, by violating school district policies against harassment and bullying.

Balancing students' rights against schools' need for orderly operations can be challenging. A Texas case offers an example of school administrators who achieved a wise balance. In 2006, in Cypress-Fairbanks ISD, about 300 students walked out of school to protest pending immigration reform legislation in Congress. After the walk-out, their principal gathered the students in the auditorium, gave them time to voice their opinions, then told them not to walk out again. The following school day, teachers were instructed to send students to the office if they were wearing t-shirts with related slogans (including "We Are Not Criminals" and "Border Patrol"),

and bathroom passes were restricted in an effort to keep students in class. Despite these precautions, a second walkout occurred. In response, participating students were suspended through the end of the week. Students and parents sued the school district. The federal district court ruled in the school district's favor. The court found no policy or custom of suppressing free speech by the district; the high school principal acted reasonably by prohibiting certain t-shirts considering the likelihood of disruption; teachers did not retaliate against students expressing political views by denying opportunities to go to the bathroom during classes; and the school did not violate the assembly rights of parents by ordering them off school premises when they attempted to protest the students' suspension. *Madrid v. Anthony*, 510 F.Supp.2d 425 (S.D. Tex. 2007).

Students occasionally engage in expression that some might consider political speech, but others consider a form of racial harassment. For example, during the 2016 presidential election, multiple Texas newspapers reported incidents in which high school students at predominantly white schools displayed messages stating "Build the Wall" at athletic events against schools with predominantly Latino populations. Claire Cardona, *Students Chant "Build That Wall" During Texas Volleyball Tournament*, Dallas Morning News (Nov. 15, 2016), dallasnews.com/news/education/2016/11/15/students-chant-build-wall-texas-volleyball-tournament. When incidents like this occur, school officials should intervene, investigate, and respond in ways calculated to protect the rights of all students. If school officials have knowledge of harassing speech and fail to intervene, the officials may be accused of violating students' civil rights. For example, following an investigation by the U.S. Department of Justice into an incident involving the harassment of minority students, a Philadelphia school district agreed to strict guidelines, including state and federal monitoring. The school district was accused of depriving Asian students of equal protection "by remaining deliberately indifferent to known instances of severe and pervasive student-on-student harassment of Asian students based on their race, color, and/or national origin." Although the school district denied the findings, it chose to reach a settlement to avoid further legal action. U.S. Department of Justice, *Justice Department Reaches Agreement with Philadelphia School District to Resolve Harassment Allegations* (Dec. 15, 2010), justice.gov/opa/pr/justice-department-reaches-agreement-philadelphia-school-district-resolve-harassment.

Conclusion

Although controversies still arise and resources are often scarce, Texas public schools have served and will continue to receive and serve recent immigrant children, regardless of their immigration status.

For more information on this and other school law topics,
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