
INTEROFFICE MEMORANDUM

TO: Tina Kelly

FROM: Attorney

SUBJECT: Liberty School District Policy Towards Undocumented Citizens

DATE: February 18th, 2020

SUMMARY:

You have asked me to provide an analysis of your options as a school teacher in the Liberty School District specifically as it pertains to students who are suspected of being undocumented immigrants. Relative to the facts you have given me I would respond as follows:

OPTION 1:

One option is to not report your student to the school administration because this policy is illegal. The Liberty School District policy states that employees must report any information that suggests a student is an undocumented immigrant, and that these children are not considered residents of the school district. However, this was contradicted in *Plyler v. Doe*, 457 U.S. 202 (1982). In this case, Texas was not allowing undocumented children to enter public schools or forcing them to pay for education. The Supreme Court ruled that these students are residents of the school district and have the right to education. School policies that prevent illegal immigrants from going to school violate the Equal Protection Clause in the 14th Amendment. The people of the United States have the same civil rights regardless of their documentation. Discriminating against students in public schools is prohibited in the Civil Rights Act of 1964. Title IV of this law prohibits discrimination on the basis of origin, race, or color. The Liberty School District Policy considers undocumented students to not be part of the school district because of their origin.

In addition to that, this policy is illegal at the state level. Connecticut's Enrollment Guidance, Commissioner's Memo 8-22-17, requires that "all families, including immigrant and refugee families, feel welcome when they register their children for school." Social security numbers that prove citizenship are optional when registering children for school. George W. Bush High School can ask for documentation regarding if a student lives in the school district, not whether the child is a citizen.

Furthermore, there is no clear evidence that Juan Suarez is an illegal immigrant. His peer who claimed that "they would send him back" could've been misinterpreted. Mr. Suarez could be in danger of being sent back to detention, class, or an array of other places. Even if this comment was referring to illegal immigration, some people do not realize that Puerto Rico is a territory in the United States. Gossip is constantly spreading among high school students. Since Juan is a shy boy of color, he could easily become a prime victim of bullying and false rumors.

There is a chance that the school district could discover that you did not report this student and decide to let you go. In this case, you can fight this unconstitutional policy with the vast amount of evidence above and win.

OPTION 2:

You can tell the Liberty School District administration that you suspect that one of your students may be an illegal immigrant. Due to the Family Education Rights and Privacy Act (FERPA) you cannot reveal the student's name without parental consent. You can ask Juan's parents for consent to tell the administration about your specific suspicions, but it is extremely unlikely that you'll get it. This decision will protect your job under the school district policy. However, it may set off a hunt among administrators where students of color could be discriminated against and targeted. This could not only hurt Mr. Suarez but any other student who appears to be foreign. If an administrator decides to

report Juan Suarez or any other student to immigration authorities without consent it will be a clear violation of FERPA. This action would exploit his academic records. It could lead to a lawsuit against the Liberty School District where you might have to testify. If the parents don't sue, then their family could be deported and separated.

OPTION 3:

While I believe you are on strong legal grounds if you choose to not report Juan, you can also bring a preliminary lawsuit to ask the court to determine the school district's policy is illegal. You could ask your union for assistance and see if you can bring this action on behalf of all the teachers in the district. You could ask the court to determine the school district policy violates the Supreme Court's decision in *Plyler*, as well as the Connecticut laws previously referenced. By bringing this type of case, you would likely prevent the district from terminating your position since you are asking the court to make a decision on the legality of the policy. This would enable you to protect children like Juan by getting rid of an illegal policy and also proactively take steps towards protecting your job. The downside is you have to sue your school district, and this may make you uncomfortable.

CONCLUSION:

Ms. Kelly, I've tried to summarize the different legal options available. While I may believe justice requires us to sue the school district to get rid of an illegal, unconstitutional policy that targets immigrant children, you also have to be comfortable with this choice. As I said in Option 1, I believe you can choose to not report Juan. If the school district learned of your suspicions and fired you for failing to come forward, the illegality of the policy would be a powerful defense. Also, you really do not have any direct knowledge that Juan is in this country illegally. Option 2 may seem like the easiest choice, but I would disagree with

this course of action. You will face pressure from the school district to name the child, which is something that you cannot do under federal and state law. I recognize that you have some difficult choices to make. If you choose Option 3, my firm would be interested in helping you fight the district's unconstitutional policy. This option would help you create a more inclusive community and protect students and teachers.

Works Cited

- “Access to Education - Rule of Law.” *United States Courts*,
www.uscourts.gov/educational-resources/educational-activities/access-education-rule-law.
- “Equal Protection.” *Legal Information Institute*, Legal Information Institute,
www.law.cornell.edu/wex/equal_protection.
- “Family Educational Rights and Privacy Act (FERPA).” *Home*, US Department of Education (ED), 1 Mar. 2018,
www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html.
- “Home.” *Home | U.S. Department of Education*, www.ed.gov/.
- McGowan, William. “Immigration and The New York Times.” *CIS.org*,
cis.org/Immigration-and-New-York-Times.
- Miller, Michael. “Immigrant Kids Fill This Town's Schools. Their Bus Driver Is Leading the Backlash.” *The Washington Post*, WP Company, 22 Sept. 2019,
www.washingtonpost.com/local/immigration/immigrant-kids-fill-this-towns-schools-their-bus-driver-resents-the-system-that-brought-them-here/2019/09/22/861c0fb4-d321-11e9-9610-fb56c5522e1c_story.html.
- “Public Education for Immigrant Students: Understanding Plyler v. Doe.” *American Immigration Council*, 15 June 2017,
www.americanimmigrationcouncil.org/research/plyler-v-doe-public-education-immigrant-students.
- Team, Content. “Plyler v. Doe - Case Summary and Case Brief.” *Legal Dictionary*, 16 Apr. 2017, legaldictionary.net/plyler-v-doe/.
- United States, Congress, Schaffer, Frederick P. “Higher Education Law, 2014: Current Issues and Recent Developments.” *Higher Education Law, 2014: Current Issues and Recent Developments*, Practising Law Institute, 2014.