

## MEMORANDUM

**TO:** Tina Kelly  
**FROM:** Attorney  
**DATE:** January 2, 2020  
**SUBJECT:** **Liberty School District Student Immigration Policy: Duty to Report**

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I. Background and Purpose

This memo is in response to your inquiry seeking recommendations on how to proceed with the Liberty School District employment policy which mandates employees to report undocumented immigrant students to school administrators. I have studied this policy and researched the State of Connecticut Department of Education policies on immigrant students attending Connecticut public schools. I have also researched Connecticut state law and federal law pertaining to immigrant students attending public schools.

It should be noted that the State of Connecticut Office of Legislative Research (C-OLR) does not collect data on the number of undocumented students who attend Connecticut public schools.

The state has no reason to collect such data because immigration status does not affect a child's right to attend public schools.<sup>1</sup>

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<sup>1</sup> Attachment A-(C-OLR) Research Report 2011-R-0411 Judith Lohman, Assistant Director EDUCATION - CT DEPT OF; IMMIGRATION AND NATURALIZATION; SCHOOLS <https://www.cga.ct.gov/2011/rpt/2011-R-0411.htm>

## II. Review Summary

In August 2019 the town of Hebron, CT unlawfully asked a student about his immigration status and subsequently refused him enrollment in RHAM High School without producing a green card. Senator Chris Murphy and the ACLU of Connecticut quickly informed the Connecticut Board of Education (BOE) that this adjudication was illegal.<sup>2</sup> There are several legal guidelines regarding immigrant children that public elementary and secondary education institutions must adhere to under Federal law;

- State and local educational agencies are required to provide equal access to all children regardless of immigration status.
- School districts may not request information with the purpose of denying access to public schools on the basis of race, color or national origin.
- To comply with Federal civil rights laws, such as Title IV and VI of the Civil Rights Act of 1964, as well as mandates from the U.S. Supreme Court, students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents.
- School districts may not bar enrollment due to a lack of birth certificate, lack of English proficiency, or failure to provide a Social Security number.
- Citing the Due Process Clause protection of the 5<sup>th</sup> and 14<sup>th</sup> Amendments, the U.S. Supreme Court case of *Plyler v. Doe*, 457 U.S. 202 (1982) holds that a State may not

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<sup>2</sup>Associated Press, Hartford Courant, August 29, 2019-Hebron; Chris Ehrmann  
<https://www.courant.com/news/connecticut/hc-news-ap-hebron-family-immigration-statu>

deny access to a basic public education to any child residing in the state, whether present in the United States legally or illegally.<sup>3</sup>

*(Although several states and localities have attempted to pass unofficial policies that violate this ruling, such as California Proposition 187, Alabama HB 56, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, these measures have subsequently been struck down in federal court for violating Plyler.)<sup>4</sup>*

- The 1974 Family Educational Rights and Privacy Act (FERPA) and the Office of Civil Rights (OCR), a part of the Department of Education, both declare that immigration status falls under the guidelines of personal information that need not be disclosed.<sup>5</sup>

Connecticut Supreme Court rulings have similarly barred school districts from denying students access to public school on the basis of immigration status. In February 2017 the Governor's office issued a letter to Connecticut school superintendents declaring that the status of a student's citizenship and documentation had no relevancy to establishing district residency and that all children residing in Connecticut are entitled to public education regardless of citizenship, immigration status, or the status of their parents or guardians.<sup>6</sup> Prior BOE Commissioner Dr. Dianna R. Wentzell followed up with an explanatory letter to school superintendents stating that although the Connecticut State Department of Education (CSDE) asks districts to collect and report the number of children who meet the definition of Immigrant Children and Youth, this is

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<sup>3</sup> Plyler v. Doe, 102 S. Ct 2382, 1982; AILA Law Journal / October 2019, Vol. 1, No. 2, pp. 211–233. © 2019 American Immigration Lawyers Association.

<sup>4</sup> Alabama HB 56 (AL Act 2011-535), CA Proposition 187-1994, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) AILA Law Journal / October 2019, Vol. 1, No. 2, pp. 211–233. © 2019 American Immigration Lawyers Association

<sup>5</sup> Family Educational Rights and Privacy Act-1974, <https://www2.ed.gov/ferpa>

<sup>6</sup> Attachment B-Letter to CT Superintendents of Schools from Governor Dannel P. Malloy (February 21, 2017) [governor.malloy@ct.gov](mailto:governor.malloy@ct.gov)

only done to award eligible districts the Federal Language Instruction for Immigration Children and Youth Grant from the U.S. Department of Education. The CSDE does not request the status of that immigration nor country of origin as it is unnecessary in determining eligibility for the grant under federal law.<sup>7</sup> This information was reprinted in a letter to all Public School Information System (PSIS) District Coordinators by BOE Chief Performance Officer Ajit Gopalakrishnan.<sup>8</sup> The ninth edition of *A Practical Guide to Connecticut School Law* published by the Connecticut Association of Boards of Education further affirms that “Connecticut school districts will generally be responsible for children who are actually living in their district, regardless of their immigration status.”<sup>9</sup>

### III. Recommendations

George W. Bush High School has no legitimate reason to ask employees to report undocumented students. It also appears to foster an atmosphere of animosity toward any student who may be perceived as an immigrant, documented or not, raising legitimate concerns of discrimination. Failure to comply with this policy may lead to attempt possible disciplinary action against you, but it is my legal opinion that any discipline would be un-sustained since this policy is out of compliance with CT BOE policy and is in violation of state and federal law. My recommendation is that you refrain from reporting any students. Allow me to contact the present commissioner of the Connecticut Board of Education, Dr. Miguel A. Cardona, and forward him a copy of this policy. It is highly likely he is unaware of it. I will also cc the Liberty School

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<sup>7</sup> Attachment C- Letter to CT Superintendents of Schools from Commissioner of Education Dr. Dianna Wentzell (October 16, 2017)

<sup>8</sup> Attachment D-Letter to Tittle III Contacts Public School Information System (PSIS) District Coordinators by Ajit Gopalakrishnan (October 16, 2017)

<sup>9</sup>(Mooney, Thomas, B. Esq. *A Practical Guide to Connecticut School Law* 9th Edition, p. 266, Connecticut Board of Education)

District Superintendent and principal of George W. Bush High school as they may simply be ignorant of CT BOE policy and the law. It is improbable, but if Commissioner Cardona takes no action to nullify this policy I recommend allowing me further scope to contact other agencies such as the Governor's office, the ACLU, or Senator Murphy. If necessary, I can further file an injunction with the courts in an attempt to nullify what is clearly an illegal policy. I also recommend you notify your union president of my findings regarding this policy, making him/her aware that it places all its members in legal and civil jeopardy through forced compliance.

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