



School Leaders Risk Management Association

# UPDATE

December 2014



## Are Your Enrollment Policies Regarding Undocumented Students Subjecting Your School District to Potential Liability?

**Use SLRMA’s Undocumented Student Enrollment Policy: Self-Audit and Best Practices today to prevent unnecessary litigation.**

In June 2014, several New Jersey school districts were sued for their failure to comply with state and federal constitutional law requirements prohibiting discrimination against undocumented students attempting to enroll in public school. Within seven days after the lawsuits were filed, the school came into compliance, and the lawsuits were terminated.

The immigration debate in the United States has recently become highly contested and the rhetoric is strong on both sides of the issue. In its May 8, 2014, “Dear Colleague” letter, the U.S. Department of

“Education is...the most important function of state and local governments...[and the opportunity of an education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

**Brown v. Board of Education,**  
347 U.S. 483, 493 (1954)

On overturning a Texas state statute that withheld state funds for the education of children not “legally admitted” into the United States: “[This statute] imposes a lifetime hardship on a discrete class of children,...[and by] denying these children a basic education...we foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”

**Plyer v. Doe,**  
457 U.S. 202, 223 (1982)



Education’s Office for Civil Rights (“OCR”), however, reemphasized that public educational agencies are required to provide all children with equal access to public education at the elementary and secondary levels regardless of national origin or immigration status. A copy of this letter is located on SLRMA’s website. This prohibition against discrimination prevents school districts from asking about the student’s citizenship, the parents’ immigration status or the ability of the student (or parents) to provide their social security numbers.

# Undocumented Student Enrollment Policy: Self-Audit and Best Practices.

This self-audit form allows a school district to examine whether it has a policy addressing equal enrollment access to educational opportunities for undocumented students. This checklist should be used to evaluate, review and (if necessary) make changes to existing policies (or create new ones) regarding undocumented students.

**I. Does the district's policy state its scope and purpose?**  Yes  No

◆ Does the policy state that it applies to student enrollment practices?  Yes  No

**II. Does the district's policy discuss permissible ways to establish a prospective student's residence?**  Yes  No

◆ Does the policy require the district to periodically review the list of documents that an individual could use to establish residency in order to ensure that the district does not unlawfully bar or discourage undocumented students (or those whose parents are undocumented) from enrolling or attending school?  Yes  No

◆ Does the policy prohibit inquiring about a prospective student's citizenship or immigration status in order to establish residency within the district?  Yes  No

◆ Does the policy prohibit inquiring about the citizenship or immigration status of a prospective student's parents or guardians in order to establish residency within the district?  Yes  No

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**V. Does the district's policy address the use of social security numbers?**  Yes  No

◆ Does the policy address whether social security numbers will be used as student identification numbers (or, for example, a randomly generated number)?  Yes  No

◆ Does the policy state that a prospective student does not need to provide a social security number in order to enroll in or attend school?  Yes  No

**VI. Does the district's policy address disclosure of information about enrolled students?**  Yes  No

◆ Does the policy reference the district's responsibilities under the Family Educational Rights and Privacy Act of 1974 ("FERPA") and any district policy addressing FERPA?  Yes  No

◆ Does the policy explain that personally identifiable information from a student's education records may not be disclosed except under certain circumstances enumerated in the district's FERPA policy?  Yes  No

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**X. Does the district's policy discuss the methods it will employ to ensure that the policy remains current?**  Yes  No

◆ Does the policy require the district to periodically review it to ensure that it does not have a chilling effect on the enrollment of undocumented students?  Yes  No

◆ Does the policy require the district to review state and district-level enrollment data periodically to determine if student enrollment trends reveal any barriers to attendance in the district as a whole or at a particular school?  Yes  No

# Recent Dispatches in the Newsroom



Log In and Download the Recent Case Summaries That Impact Your School District and Find Out What You May Be Missing

## October

**Undocumented Students: Further Guidance on Proper Enrollment Policies and Considerations.**

**Hogan Lovells' Overview of The Office For Civil Rights' Warnings and Additional Guidance on Schools' Obligations to Provide Equitable Access to Education Resources.**

## September

**Scheick v. Tecumseh Public Schools, 766 F.3d 523 (6th Cir. 2014 - Michigan)**

In this recent federal appellate case, the court provides an outline of the necessary elements regarding the "but for" causation necessary for age discrimination cases.

*continued from page 1*

We are happy to provide our members with SLRMA's *Undocumented Student Enrollment Policy: Self-Audit and Best Practices*. This self-audit will allow your school district to determine whether undocumented students are given equal enrollment access to educational opportunities. By its letter, the OCR clearly indicates that it will closely examine enrollment policies and is committed to "vigorously enforcing the Federal civil rights laws...so that all students are afforded equal educational opportunities. Now is the time to use SLRMA's *Undocumented Student Enrollment Policy: Self-Audit and Best Practices* and avoid unnecessary investigations.●



SLRMA's Checklists are tools to help you avoid potentially damaging liability.

In the last quarter, SLRMA's most popular checklists were:

- 1 District Transgender and Gender Non-conforming Student: Self-Audit Checklist
- 2 School Districts Cloud Computing Services Self-Audit Checklist
- 3 District Social Media Policy, Part 2: Administrator/Teacher Social Media Policies Checklist
- 4 District Social Media Policy, Part 1: Student Social Media Policies Checklist

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SLRMA UPDATE | December 2014

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ACLU June 2, 2014

## ACLU Successfully Sues New Jersey School Districts for Discriminatory Enrollment Policies as to Undocumented Students

NEWARK - The American Civil Liberties Union of New Jersey (ACLU-NJ) filed seven lawsuits today against New Jersey school districts that have failed to comply with state and federal constitutional law requirements prohibiting discrimination against immigrant families attempting to enroll their children in school. The school districts sued today have maintained these discriminatory policies despite the ACLU-NJ's repeated warnings to revoke them.

**Download SLRMA's**

***Undocumented Student Enrollment Policy: Self-Audit and Best Practices Today and Protect Your School.***