



# Rights of Immigrant Students in Public Schools, Colleges & Universities

November 2009

GEORGIA DEPARTMENT OF EDUCATION



# History of Plyler v. Doe, 1982

- In the early 1980s, lawyers for a group of children of migrant farm workers challenged a Texas law which allowed local school districts to refuse to educate children who were not U.S. citizens.
- The U.S. Supreme Court said that the law was unconstitutional, and ordered the state to provide an educational program for all children, citizens and non-citizens, living in the state. The Court said that the right to an education was too important to the child and to society as a whole to allow such discrimination.
- *Plyler v. Doe*, 457 U.S. 202, rehearing denied, 458 U.S. 1131 (1982).
- MALDEF litigated *Plyler* again in Spring, 2006 in Albuquerque, NM.

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## As a result of the Plyler ruling, public schools may not:

- Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status
- Treat a student disparately to determine residency
- Engage in any practices to deter or discourage the right of access to school
- Require students or parents to disclose or document their immigration status
- Require social security numbers from all students, as this may expose undocumented status (this is also impermissible under the Privacy Act of 1974)

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## Guaranteed Primary and Secondary Education

- Plyler v. Doe, 457 U.S. 202 (1982): School-age children guaranteed access to primary and secondary education.
- State Compulsory School Attendance laws mandate children must be in school.

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## Enforcement of *Plyler*

MALDEF lawyers have had to file several dozen actions since the early 1980s to enforce *Plyler*'s clear holding, including:

- Combating school board actions requiring Social Security number
- School requests for driver's licenses to identify parents
- Additional "registration" of immigrant children
- Separate schools for immigrant children
- College tuition policies
- Other policies and practices designed to identify immigration status or single out undocumented children

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# Social Security Numbers and Education

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

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## Title VI of the Civil Rights Act of 1964

This title declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments and agencies to take action to carry out this policy.



# Rights of Limited English Proficient Children

## What is the federal authority requiring districts to address the needs of English language learners?

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin. In *Lau v. Nichols*, the U.S. Supreme Court affirmed a Department of Education memorandum dated May 25, 1970, which directed school districts to take steps to help limited-English proficient (LEP) students overcome language barriers and to ensure that they can participate meaningfully in the district's educational programs.

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## What Happens When Services Are Not Provided?

- Limited-English proficient students (also sometimes referred to as English-Language Learners) may suffer repeated failure in the classroom, falling behind in grade, and dropping out of school if they are not provided services to overcome language barriers.
- Students who are not proficient in English are sometimes inappropriately placed in special education classes.
- Due to their lack of English proficiency, qualified students often do not have access to advanced courses or Gifted and Talented Programs.

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## Immigration & Education

- Under the Family Education Rights and Privacy Act (FERPA), the U.S. Citizenship and Immigration Services, like any other outside agency, cannot obtain student record information from the public schools unless the school has written permission from the parent.
- School personnel should be aware that they have no legal obligation or authority to enforce US immigration laws.

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# Enrolling A Child in School

## *Proof of child's age:*

Schools may ask for proof of your child's age. You may use a birth or baptismal certificate. If you don't have a birth certificate, you may be asked for some other proof of age. Your child should not be denied admission if you do not have a birth certificate, but you will have to show some proof of age.

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## History of Toll v. Moreno, 1982

- A higher education case concerning residency requirements for long-time non-immigrant visa holders, and whether they could be eligible for in-state tuition.
- The US Supreme Court found that the long-time non-immigrant visa holders were eligible for in-state tuition benefits.

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## Access to Post Secondary Education for Undocumented Students

- Approximately 11.9 million undocumented immigrants residing in U.S. (Source: PEW Hispanic Center, March 2009)
- 50,000-65,000 undocumented immigrant students graduate from U.S. high schools each year. (Source: Urban Institute)
- In the Spring Semester 2009, approximately 9,578 non-U.S. citizens were enrolled in University System of Georgia colleges and universities. (Source: OIE, Georgia Board of Regents)

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## Economic Impact

- In 2007, U.S. acquired a \$58 billion surplus from taxes paid by immigrants. (Source: Immigration Forum)
- Immigrant families use public benefits at lower rates than U.S. families. (Source: Urban Institute)
- In 2007, dropout rate for immigrant Latinos over 16 was estimated at 37.7%. (Source: PEW Hispanic Center)
- Average earnings for those with Bachelor's degree is higher – over \$50,000.
- More than \$5 is generated into the economy for every dollar invested in immigrant students' education. (Source: Texas study)

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# Drop Out Rates

## National Center for Education Statistics

Table A-20-1. Number of status dropouts and status dropout rates of 16- through 24-year-olds, by nativity and selected characteristics: American Community Survey 2007

Characteristic	Number of status dropouts (in thousands)	Status dropout rate (percent)	Native-born dropout rate (percent)	Foreign-born dropout rate (percent)	Percent of all status dropouts
Total <sup>1</sup>	3,583	9.3	7.7	21.2	100.0
Sex					
Male	2,160	10.9	8.8	25	60.3
Female	1,422	7.6	6.5	16.6	39.7
Race/ethnicity <sup>2</sup>					
White	1,426	6.1	6.1	5.4	39.8
Black	635	11.5	11.8	7.6	17.7
Hispanic	1,349	19.9	11.5	34.3	37.7
Asian	47	3	2.2	3.7	1.3
Pacific Islander	5	7.6	5.5	12	0.2
American Indian/ Alaska Native	49	15.3	15.4	‡	1.4
More than one race	58	7.6	7.8	3.8	1.6

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## Why Can't They Just "Get Legal"?

- Complicated and narrow categories of eligibility for immigration benefits
- Process can take up to 12 years
- In U.S. through no fault of their own

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## Possible Barriers to Postsecondary Education for Undocumented Students

- Admissions/Enrollment
- Tuition Rates
- Ineligible for state and federal financial aid

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## Admissions/Enrollment

- No federal or state law prohibits enrollment of undocumented student to an institution of higher education
- Must meet academic admission requirements of institution like any other student

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# Types of Colleges and Universities in Georgia

- 35 colleges and universities in the University System of Georgia
  - \* Governed by the Board of Regents
  - \* Research, Regional, State, etc.
  - \* Admission Requirements Vary
- 34 technical colleges in Georgia
  - \* Governed by the Technical College System of Georgia
  - \* Admission Requirements Vary; based on program of study
- Private colleges

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Non U.S. Citizens in Georgia's Colleges & Universities  
(Spring 2009)

Institution Type	Number of Students
Research	5,853
Regional Universities	413
State Universities	1,196
State Colleges	256
Two-Year Colleges	1,140
Total	9,578

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# Tuition Rates

- In-State or Out-of-State Tuition based on residency definitions
- University System of Georgia (USG) vs. Technical College System of Georgia (TCSG)

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## Who May Be Excluded from In-State Tuition?

- Overstays (entered U.S. in valid status now expired)
- Students who have lived in Georgia most of their lives and attended/graduated from Georgia high schools
- Those awaiting an immigration benefit or who have a pending application
- Undocumented Students (students brought here at a young age by their parents through no fault of their own)

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## Ineligible for State and Federal Financial Aid

- Do not qualify for federal and state financial aid
- May be eligible for private, unrestricted scholarships and grants
- May be eligible for tuition waiver; varies from institution to institution
- Possible changes in eligibility if DREAM Act is revisited and passed under the new administration

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## Fairly Recent Changes at Georgia Colleges & Universities

- Georgia BOR Out-of-State Tuition Waivers for undocumented students eliminated – Phase-In was completed Fall 2007
- Name change for the Department of Technical and Adult Education – changed to TCSG; several technical colleges are being closed and absorbed by other near-by technical colleges (2009)

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# State Legislation

- 10 states - Texas, New York, California, Utah, Washington, Oklahoma, Illinois, Kansas, Nebraska, and New Mexico have passed some form of legislation regarding in-state tuition; 15 other states are moving in the same direction.
- Public institutions in Delaware have agreed to allow undocumented students to establish residency status, in lieu of legislation that was introduced in the Delaware General Assembly.
- Georgia passed legislation limiting public benefits for illegal immigrants in 2006, but education was not included in the legislation.

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## State Legislation Continued...

*(States Formally Considering Legislation Regarding Undocumented Students and Residency Tuition Status (Fall, 2006))*

Legislation Introduced by Fall 2006	
Alaska	Michigan
Arizona	Mississippi
California	Missouri
Colorado	New Jersey
Delaware	North Carolina
Florida	Oregon
Hawaii	Rhode Island
Kansas	Utah
Maryland	Virginia
Massachusetts	Wyoming

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# Legislation in Georgia

Georgia's SB 529 (The Georgia Security and Immigration Compliance Act) covers multiple topics and was signed by the Governor on April 17, 2006.

- Memo of understanding (MOU) regarding enforcement of federal immigration and custom law.
- Effort to determine lawful presence if incarcerated for felony or DUI
- Enforces standard of ethics for those providing immigration assistance
- 6% income tax withholding for an incorrect tax identification number
- State agencies must verify lawful presence before awarding certain benefits - education excluded

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## *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) - 1996*

- Includes a provision that prohibits states “from providing a post-secondary education benefit to an alien not lawfully present unless any citizen or national is eligible for such benefit”
- Left up to interpretation



# Tabled Federal Legislation

## The DREAM Act

Will affect financial barriers and help straighten out immigration status of students who qualify under the certain eligibility criteria:

- 12-35 years old when Law is enacted
- Arrived in the U.S. before age 18
- Reside continuously in the U.S. for 5 year since date of arrival
- Graduate from a U.S. high school or obtained a General Education Diploma (GED)
- “Good Moral Character”

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# Work After College?

*As of March 2008, 8.3 million undocumented immigrants in the U.S. labor force  
(5.4% of the nation's workforce)*

## **Currently ineligible without valid work authorization. However:**

- Immigration laws constantly changing
- May be eligible for immigration benefit in future
- May already have a pending application and process could take many years
- If return to their home country, they will be highly marketable being bilingual with a U.S. degree

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# Questions



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