



# **Migrant Students Have the Right to Attend Texas Public Schools Under the U.S. Constitution**

**IDRA Comment on Interim Charge on Impact of Migrant Children on Public Schools**

Submitted to the Texas House Public Education Committee

April 26, 2022

IDRA is an independent, non-partisan education non-profit committed to achieving equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. We submit these comments for your consideration on the legal protections of migrant children in public schools and the responsibility of the state and local education agencies to uphold the U.S. Constitution.

## **Legal Protections & Requirements for Students to Attend School, Regardless of Immigration Status, Under the U.S. Constitution and Federal and State Law**

All students have the right to attend public schools, regardless of their immigration status or that of their parents. The U.S. Supreme Court ruled in *Plyler v. Doe* (1982) that denying students free enrollment in public schools based on immigration status violates the Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution. The Supreme Court said denying immigrant students enrollment in public schools creates a discrete class of marginalized youth with foreclosed opportunities for their education and advancement.

Joint guidance from the U.S. Departments of Justice and Education in 2014 explicitly advised schools that any discrimination based on race, color or national origin, among other characteristics, violates the U.S. Constitution and Title IV of the *Civil Rights Act of 1964*. Discrimination may be outright denial of enrollment or include indirect measures through enrollment requirements that present barriers, such as asking families to present certain legal documentation (e.g., social security numbers or birth certificates) or charging tuition to immigrant students despite their residence in the district's boundaries. These practices discourage students from accessing a basic public education, compromise students' ability to become educated contributors in our society and violate Texas's compulsory attendance law (See Tex. Educ. Code § 25.085).

## **Issues of Importance to Texas Public Schools**

All children should be able to access Texas public schools. This is essential to a free, compulsory public school system that supports an educated society and democracy. Beyond access, policymakers must ensure public schools are excellent and equitable for all students. To accomplish that, policymakers and schools should prioritize several pressing issues. Schools and students continue to face challenges from the ongoing COVID-19 pandemic, such as disruptions to instruction and mental health challenges. Many other issues are at the forefront for schools, including addressing the chronic teacher shortage in key subject areas and the shortage of teachers of color; identifying sustainable state revenue streams to support adequate and equitable public education funding; implementing culturally sustaining school practices in

curriculum, instruction, discipline and teacher training; and advancing strategies to achieve the goals set by the *Building a Talent Strong Texas* strategic plan, which the state has yet to make adequate progress toward, especially for marginalized groups (THECB, 2022).

## Recommendations

Based on standing legal protections, IDRA recommends that the State of Texas:

- Continue to comply with the U.S. Constitution regarding immigrant students' rights to attend public schools;
- Reaffirm the message to school districts that students have access to Texas public schools without regard to citizenship status; and
- Explore policies in the interim and future legislative sessions that promote safe, welcoming and culturally sustaining school environments for all students with respect to race, gender, national origin and religion.

For questions or more information, please contact Chloe Latham Sikes, Ph.D., IDRA Deputy Director of Policy, at [chloe.sikes@idra.org](mailto:chloe.sikes@idra.org).

## Resources

IDRA. (2017). Immigrant Students' Rights to Attend Public Schools. IDRA. <https://idra.news/eBim18p>

IDRA. (2021). Education of Immigrant Children, webpage. IDRA. [https://www.idra.org/education\\_policy/immigrant-children-education/](https://www.idra.org/education_policy/immigrant-children-education/)

State of Texas. Texas Education Code, §25.085. Chapter 25, Admission, Transfer, and Attendance. Section 25.085, Compulsory Attendance Law. <https://statutes.capitol.texas.gov/Docs/ED/htm/ED.25.htm#25.085>

THECB. (March 2022). Building a Talent Strong Texas. Texas Higher Education Coordinating Board.

<https://reportcenter.highered.texas.gov/agency-publication/miscellaneous/building-talent-strong-texas/>

Lhamon, C.E., Rosenfelt, P.H., & Samuels, J. (May 8, 2014). Joint Dear Colleague Letter on School Enrollment Procedures. U.S. Department of Justice and Department of Education.

<http://www.justice.gov/crt/about/edu/documents/plyerletter.pdf>

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