

BILL: House Bill 1165
TITLE: State Government – Government Agents – Requests for and Use of Immigration Status Information
POSITION: OPPOSE
DATE: March 5, 2019
COMMITTEE: Judiciary Committee
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the State's local boards of education, opposes House Bill 1165, as it relates to local school systems, because we believe the law adequately protects the constitutional rights of all students, regardless of immigration status, to a free public education.

To be clear, a child's enrollment may never be conditioned on his or her immigration status. The U.S. Supreme Court addressed this question in its landmark case *Plyler v. Doe* (457 U.S. 202, 221 (1982)). The Court considered "whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens." The Court first concluded that illegal aliens are "persons" who may claim the benefit of the Fourteenth Amendment's guarantee of equal protection, before turning to the question of whether the Equal Protection Clause was violated by the refusal of the State of Texas to reimburse local school boards for the education of children unable to demonstrate that their presence within the United States was lawful.

The Court concluded that while education is not a fundamental right, the harm to children denied an education, especially illiteracy, warrants heightened scrutiny of the state's rational basis for denying access to education to a discrete group of children. The Court acknowledged that "[p]ersuasive arguments support the view that a State may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct." However, it found that "[t]hese arguments do not apply with the same force to classifications imposing disabilities on the minor children of such illegal entrants."

In *Plyler*, the Court held that "[i]f the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest" and concluded that Texas failed to do so.

The U.S. Departments of Justice and Education issued a joint "Dear Colleague" letter in May, 2011 to respond to "student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status"; declaring that "These practices contravene federal law" (Letter of Russlyn Ali, et al., OCR, (May 6, 2011)). The letter restates the holding in *Plyler v. Doe*, and also cites the "numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964."

Similarly, Maryland's State Board of Education has determined that a school system may not request information to determine whether a student is lawfully present in the United States. The State Board issued a declaratory ruling in 2009 in response to questions raised by the Frederick County Commissioners regarding the legal authority and ability of a local school system "to collect data that would tend to support whether a student is lawfully present in the United States" (*Board of Frederick County Commissioners v. Frederick County Board of Education*, MSBE Op. No. 09-11 (2009)). Frederick County asserted its interest in having the school system collect and report information of the numbers of undocumented students in order to inform its lobbying for additional federal funding for the education of these students. The County also argued that the state's Student Records Manual authorizes local boards to collect additional information, thereby allowing the collection of data regarding citizenship.

The State Board concluded that "the impact of illegal immigrant students on the school system's budget is not a valid public purpose under the ruling and reasoning of (*Plyler v. Doe*, 457 U.S. 202 (1982))." In addition, the Board found that unless a substantial, valid governmental interest were shown, the Student Records Manual or any other state education regulations when read in the context of applicable federal law would:

- (1) Prohibit a local school system's student record card from including a request for information that would tend to support the proposition that the student is lawfully present within the United States;
- (2) Prohibit a local school system's student record card from including a request for documents that would tend to support the proposition that the student is lawfully present within the United States; and
- (3) Prohibit a local school system's request that a student (or the student's parent or guardian) provide information or documents that would tend to support the proposition that the student is lawfully present within the United States."

In this light, MABE believes that current laws are sufficient to ensure the constitutional rights of Marylanders to a free public education regardless of any person's immigration status.

For these reasons, MABE requests an unfavorable report on House Bill 1000, as it would apply to local school systems.