

January 17, 2025

Office of Legal Services  
State Department of Education  
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The National Immigration Law Center (NILC) respectfully submits the following written public comment concerning the State Department of Education's Proposed Rule requiring school districts to determine and report on citizenship and immigration status. As the attached comment explains more fully, the Proposed Rule violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

NILC is one of the leading advocacy organizations in the U.S. dedicated to advancing and defending the rights and opportunities of low-income immigrants and their loved ones through multi-pronged approach, including policy advocacy, litigation, and movement-building. Through this multi-pronged approach, NILC is committed to defending and advancing the rights of all children regardless of immigration status. In 2011, our organization sued and successfully blocked an Alabama law that is, for all intents and purposes, indistinguishable from the Proposed Rule.

All children have a constitutional right to equal access to education regardless of their citizenship or immigration status. Requiring school districts to collect information about immigration status illegally chills access to this opportunity, interfering with their ability to focus on their core mission: to educate children and give all students the ability to grow, thrive, and participate fully in our democracy.

For these reasons, I respectfully urge you to reject this rule.

Sincerely,

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## PUBLIC COMMENT ON PROPOSED RULE CHANGE TO 210:10-1-5 Audits - (d)

### Enrollment

The Proposed Rule Change to 210:10-1-5(d) (Proposed Rule) would require parents or legal guardians to provide proof of U.S. citizenship or legal immigration status at the time of school enrollment. School districts would be required to record and report the number of students for whom parents or legal guardians do not establish citizenship or legal immigration status to the Oklahoma State Department of Education.<sup>1</sup>

The proposed rule would severely infringe on the right to equal access to education guaranteed by the Supreme Court 1982 ruling in *Plyler v. Doe*.<sup>2</sup> In *Plyler*, parents of undocumented children challenged Texas' barring access to free public K-12 education for undocumented children. The Court noted that denying undocumented children access to public education would visit a "lifetime hardship on a discrete class of children," subjecting them to "the stigma of illiteracy [that] will mark them for the rest of their lives" and that it would "deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation."<sup>3</sup> While *Plyler* addressed a total denial of educational access, federal courts<sup>4</sup> and the Departments of Justice and Education<sup>5</sup> have recognized that this decision protects undocumented students against governmental policies—like immigration data collection policies—that would substantially interfere with the equal right to educational access.

Indeed, our organization has sued and successfully blocked an Alabama provision that is legally indistinguishable from the proposed rule. In 2011, as part of the wave of omnibus (and ultimately unconstitutional) anti-immigrant state laws beginning with Arizona's SB 1070, the Alabama legislature enacted a measure, House Bill 56 (H.B. 56), also known as the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act." The bill included a provision (Section 28) requiring school administrators to determine the immigration status of all newly enrolling

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<sup>1</sup> [https://sde.ok.gov/sites/default/files/2025%20210\\_10%201.pdf](https://sde.ok.gov/sites/default/files/2025%20210_10%201.pdf).

<sup>2</sup> *Plyler v. Doe*, 457 U.S. 202 (1982), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457202/usrep457202.pdf>.

<sup>3</sup> *Id.* at 223.

<sup>4</sup> *Hisp. Int. Coal. of Alabama (HICA) v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

<sup>5</sup> A 2014 Dear Colleague letter from the U.S. Departments of Justice and Education clearly states that under federal civil rights laws and the mandates of the Supreme Court, "districts may not request information *with the purpose or result* of denying access to public schools on the basis of race, color, or national origin." (emphasis added) See U.S. Department of Justice Civil Rights Division and U.S. Department of Education Office of Civil Rights and Office of General Counsel, *Dear Colleague Letter*, at 2 (May 8, 2014)

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>.

students and to submit an annual report to the state Board of Education setting forth all data obtained under the requirement.

NILC and other legal organizations, as well as the federal government, brought lawsuits to block H.B. 56, and ultimately, the Eleventh Circuit Court of Appeals enjoined the bill, including Section 28's data-collection provision.<sup>6</sup> There, the court determined that Section 28's mandated disclosure of a student's immigration status "impose[d] obstacles to the ability of an undocumented child to obtain an education" because it would "understandably deter this population from enrolling in and attending school because . . . these children are subject to deportation, and removal proceedings can be instituted upon the federal government being informed of their undocumented status."<sup>7</sup> The court also found that the supposed privacy protections in the provision could not alleviate these concerns, because federal statutes prohibit states from restricting the disclosure of this information.<sup>8</sup> Accordingly, the court held that the Alabama statute "substantially burdened" the right to equal access to an education.<sup>9</sup>

Here, the Proposed Rule imposes the same burdens and deterrents on enrolling as did Section 28. It mandates proof of immigration status or citizenship at the time of enrollment, and for the school district to record the number of students who did not provide this information.<sup>10</sup> While the Proposed Rule purports to bar "recording" of an individual's immigration or citizenship status,<sup>11</sup> like Section 28, nothing in the rule purports to stop a school official handling the enrollment of students from reporting information they receive about a student's immigration status to federal immigration enforcement officials. Thus, Oklahoma students and parents will have a well-founded fear that the Proposed Rule will expose them to the risk of immigration consequences, including detention, prosecution, and potential criminal penalties.<sup>12</sup>

Additionally, like Section 28, the Proposed Rule fails to further any substantial governmental interest. The Eleventh Circuit found that because any student failing to provide the required data would be counted as lacking valid immigration status (regardless of their actual status), Section 28 could not provide reliable data to further any of Alabama's purported governmental

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<sup>6</sup> *HICA*, 691 F.3d at 1249.

<sup>7</sup> *Id.* at 1247 (cleaned up). Nor was this merely a hypothetical chilling effect. The U.S. Departments of Justice and Education subsequently reported that in the immediate aftermath of H.B. 56's implementation, Hispanic student absence rates tripled, and 13.4 percent of Alabama's Hispanic schoolchildren withdrew from school. *See Dear Colleague Letter*, *supra* note 5.

<sup>8</sup> *HICA*, 691 F.3d. at 1247-48 (citing 8 U.S.C. §§ 1373 and 1644).

<sup>9</sup> *Id.* at 48.

<sup>10</sup> Proposed Rule at d(4)-(5).

<sup>11</sup> *Id.* at d(7).

<sup>12</sup> *HICA*, 691 F.3d at 1247.

interests.<sup>13</sup> The Proposed Rule similarly requires the recording of aggregate numbers of students who did not provide the requisite documentation, meaning that even if there were a correlation between the purported government interests in collecting this information<sup>14</sup> and students' *actual* immigration status, the data gathered would not accurately reflect this information.

Moreover, the data collected does not further the purported governmental interests listed in the Proposed Rule. For example, many undocumented students have been in the United States for nearly their entire lives and do not need to be placed in English as a Second Language classes. In contrast, some United States citizens may need these classes. Some United States citizen students requiring English Language Learner services are recent arrivals to this Country, and others live in households where English is not the primary language. Indeed, Oklahoma already gathers and reports information about the needs of English Language Learners.<sup>15</sup> Thus, there are alternative and less burdensome means to meet the purported governmental interests listed in the Proposed Rule. Accordingly, none of the governmental interests asserted in the Proposed Rule is “substantial enough to justify the significant interference with the children's right to education under *Plyler*.”<sup>16</sup>

In conclusion, by chilling equal access to education, the Proposed Rule risks “impos[ing] a lifetime hardship on a discrete class of children” and “deny[ing] them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”<sup>17</sup> NILC respectfully urges the State Board of Education to reject the proposed rule.

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<sup>13</sup> *Id.* at 1248-49, *See also* Proposed Rule, *supra* note 11.

<sup>14</sup> These purported government interests are “assess[ing] statewide and local educational needs, including without limitation, student needs, language and cultural barriers, current and future needs for English as a Second Language (“ESL”) teachers, tutors and tutoring programs, current and future transportation needs, programs, and anticipated future funding needs.” *See* Proposed Rule at d(4).

<sup>15</sup> *See e.g.*, <https://sde.ok.gov/sites/default/files/FAQ.pdf>.

<sup>16</sup> *HICA*, 691 F.3d at 1249.

<sup>17</sup> *Plyler*, 457 U.S. at 223.