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An Overview of The Rights of Immigrant Parents

The rights of immigrant parents and students have not been handed to them on a silver platter, nor is one to assume that the existence of protections implies wholesale embrace or acquiescence by school districts. Whether because of racism, anti-immigrant attitudes, or plain lack of imagination, most of the rights described in this article have come about only as a result of civil rights litigation and political advocacy by representatives of minority groups. Unfortunately, litigation and advocacy will likely continue to be necessary in many jurisdictions to insure that the rights are honored. However, the information provided here may inspire voluntary change in districts and schools that violate these rights out of ignorance rather than malice.

In thinking about the rights of immigrant parents it is crucial to remember one axiom: Immigrant parents have all of the rights of every other parent. The guiding principle that should thus govern a school district's response to these parents and their children is one of equality. If a school district through design, practice, policy, or even inadvertence has placed barriers in the way of full and meaningful access of immigrant parents or their children to educational opportunity, there is a significant possibility that legal rights are being violated.

Legislatures and courts have created some specific rules which respond to common barriers to equal access. In the following pages we will explore some of these. It is important to understand two things about the rights discussed herein. First, the reason that they exist is a recognition that affirmative steps are oftentimes necessary to secure equal access for those who come to our schools with needs which are different from English-speaking long-term residents of this country; secondly, these rights are in an evolving state. As advocates, legislatures, and courts develop a fuller recognition of the barriers that confront immigrant parents and their children, new rights and new remedies are likely. CATESOL members can assist in this process

of refining the knowledge base about practices that inhibit full access and help in the creation or expansion of the rights of newcomers who have so much to offer if given a fair chance.

The Right to Enroll a Child in School

The most basic right that a parent has is for his or her child to attend school. Immigrant parents often confront barriers that unlawfully inhibit this right which is taken for granted by others. It is unlawful to demand that a parent present evidence of lawful status in the country, a social security card, or a birth certificate as a precondition to admission to the elementary and secondary schools of the state. A school has no business asking about undocumented status. If social security numbers are used as a student ID or a birth certificate is used as a way to establish age for placement, alternative systems must be adopted for a parent who cannot produce these documents. The right to enroll in school also extends to children who reside with someone other than a parent for reasons beyond merely attending a certain school district. These children must be admitted even though their protectors do not have formal legal guardianship.

Right to Demand Equal Access to the Curriculum

Under both state and federal law, all students are entitled to equal access to the full curriculum offered by a school. The major barriers confronting immigrant students are those posed by limited English proficiency. Federal law recognizes that a student classified as limited English proficient (LEP) has two needs that must be addressed by a school district: (a) the need to learn English so that within a reasonable time students can be competitive with their English-speaking peers, and (b) the need for access to the curriculum. A district must address each of these needs in a pedagogically sound manner, using adequate resources (trained teachers, materials, etc.) to accomplish the goals of equal participation and must regularly assess the program to determine if students are achieving parity; if not, the program must be adjusted to give a reasonable opportunity for its accomplishment.

Despite the fact that Governor Deukmeijian vetoed the reauthorization of the state bilingual law in 1987, school districts which continue to receive state bilingual education funds must meet the general intended purposes of the vetoed act. These have been construed by the state Department of Education in ways that often give greater rights under state law than the more general federal provisions. For example, state law requires a native language (bilingual) program for students who cannot otherwise have access to the curriculum, unless the numbers are so small that it is impossible to do so. A plan to remedy the shortage of bilingual teachers must ordinarily be developed where there are not enough certified bilingual teachers.

Equal access to the curriculum certainly means that LEP pupils be able to participate in the entire curriculum. Thus at the secondary level, steps must be taken to insure that LEP pupils can participate meaningfully in the full range of offerings – not just the remedial track but also the advanced track. Where choice programs or magnets are offered in a district, meaningful access to these programs must be provided. A system that fails to provide opportunities to participate in gifted and talented programs is legally flawed as is one that does not accommodate those with special needs. Denial of access to Chapter One is a common barrier that is unlawful.

Specific Parental Rights to Access the Schools

All of the rights of students discussed here entitle parents to go to court or other forums to enforce their rights. Over and above those rights, which come to them as protectors of their children, are certain statutory rights given to assist parents to participate effectively in the schooling of their children and the governance of their schools.

In California, a school district with 50 or more LEP pupils or a school with 20 or more must have a parental advisory committee. While these committees are viewed as advisory, they also were the product of legislation that saw active and informed parental involvement as central to the development of responsive programs. Thus the law envisions that the membership is to be a majority of parents chosen by parents and that they will have access to documents and information so that they can intelligently contribute to the development and oversight of the LEP programs.

The federal migrant education program similarly envisions a parental advisory committee composed of a majority of parents, chosen by parents, with a right to access information needed to fully participate in the development and oversight of the program. There is furthermore a statewide parent advocacy group designed to influence state policy.

Linguistic accessibility is an important determinant of whether one can participate in governance activities such as advisory committees and in the education of one's child. The law requires that parental advisory committees be linguistically accessible to non-English speaking parents. This is specific with respect to the two committees discussed above and fairly implied with respect to other committees.

Both federal and state laws require that important notices be sent to parents in a language they can understand unless not practicable. While there are some debates over the threshold number of LEP parents that triggers such notices, at a minimum a school or district with a 15% LEP membership of a single language group must prepare such notices. Bilingual information should include report cards, test information, parental activity information, required discipline notices, and other forms or specific notices

that call for decision making by parents.

Like all other parents, an immigrant parent has the right to visit a child's school and classroom, subject, of course, to reasonable regulation.

Right to Respond to Low Achievement

Rights of parents to influence the education of their children through legal remedies have typically focused on inputs; thus the discussion above focuses primarily on inequalities in the delivery of services rather than on equality or adequacy of output or achievement.

There is increasing discussion in legal circles about rights of parents to secure a legal response to failure of their children. Due to the nascent state of this discussion and the lack of space, no more will be said.

However, two recent bills signed into law deserve some mention. Under these laws parents who are dissatisfied with their schools have rights to transfer under certain circumstances. These rights belong to immigrant parents like all others. This might be an alternative response to the enforcement of the equality principle set forth above.

Right to Adult Education

While this article has focused on the rights of parents to secure equitable educational programming for their children, one should not overlook the very real rights that these parents have to better themselves, and, thus indirectly, the life chances of their children. Federally funded adult education programs require consideration of the needs of non-English proficient immigrants in their programming; this is in addition to requirements in civil rights laws that these programs be accessible to these persons. While it is not uncommon to find ESL programs in adult education (though usually far fewer slots than are needed), it is not common to find adequate access to substantive offerings. This can constitute a legal wrong.

Conclusion

As stated at the outset, it is hoped that a school district, principal, or teacher armed with the information in this article will move to assure that the rights of immigrants are honored. Indeed it is important to remember that the law generally sets minimums. Nothing prevents, and often logic suggests, expansion of the rights mentioned here. In any event, if rights are not honored, political and possibly legal action is the appropriate response of parents. ■