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As we have discussed in our presentation at the USBA regional meetings in September and October, the issue of illegal immigration has recently received increased attention and public debate, relating in part to the laws enacted in Arizona. In addition, proposed legislation has been introduced in Utah relating to illegal immigration. That context provides a good occasion to consider how this issue may affect schools and school districts and what basic legal standards apply to schools in this area.

In general, schools are not required to become directly involved in the issue of illegal immigration, either with respect to their minor students or with regard to adult education programs. Although schools certainly must comply with immigration laws in employing school personnel, an important U.S. Supreme Court decision on minor students largely removes the problem of illegal immigration from the sphere of schools' responsibilities.

This case, *Plyler v. Doe*, 457 U.S. 202 (1982), arose from a Texas law withholding funding from local school districts for educating illegal immigrant children and allowing schools to deny enrollment to such children or to charge them tuition. The Supreme Court invalidated this statute under the Equal Protection clause of the 14th Amendment, which says that a state may not "deny to any person within its jurisdiction the equal protection of the laws." Notably, the majority concluded that illegal immigrant children are not a "suspect class" because of the undeniable fact that their presence resulted from illegal conduct. Although the Court noted that public education is not a right granted to individuals by the U.S. Constitution, at the same time, the Court concluded that children cannot truly be treated as culpable with regard to violating the immigration laws because they have little control over where their parents take them and decide to live. The Court also observed that although education is not a fundamental right, it is not merely another social welfare benefit because of the significant impact that education (or lack of education) has on development and the ability to lead an economically productive life. In short, education plays a crucial role in maintaining the fabric of society. Therefore, the Court decided that while the very demanding "strict scrutiny" standard was not applicable, it would apply an intermediate level of review instead of the easily satisfied "rational basis" test of constitutionality. Under this intermediate review, the Court found that Texas had failed to demonstrate that the legislation furthered a substantial state interest and the law was therefore invalid under the Equal Protection clause.

The practical impact of this case for public schools is that such schools are not allowed to exclude minor students from enrollment based on their illegal status. In addition, because school action to determine such students' immigration status or requiring them to disclose that status would have the practical effect of excluding them from school attendance, schools may not require such information from their minor students. (This includes requiring Social Security numbers, which effectively disclose immigration status.) Furthermore, schools should be cautious regarding the types of parental information that may be required in evaluating student eligibility for attendance or participation in various programs. If the information required either directly or indirectly discloses the immigration status of the parents, that again may have the practical effect of excluding the student from attendance at the school. Finally, because conflicting state law must yield to federal law under the Supremacy Clause of the U.S. Constitution, state laws or regulations which would impose a different requirement (like the Texas statute at issue in the *Plyler* decision and a later voter-initiated statute in California) are invalid.