



U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

AB:SAS:CBP
169-38-21

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Via U.S. and Electronic Mail

MAR 20 2014

Michael P. Flanagan
State Superintendent
Michigan Department of Education
608 W. Allegan Street
P.O. Box 30008
Lansing, MI 48909

Dear Superintendent Flanagan:

The U.S. Department of Justice, Civil Rights Division, the U.S. Attorney's Office for the Eastern District of Michigan, and the U.S. Attorney's Office for the Western District of Michigan (collectively, "DOJ") have become aware of modifications to MCL 388.1641 of the State School Aid Act of 1979, which now states that districts shall not receive funds allocated for bilingual education for English Language Learner students if they allow participation of children "who are not residing in the United States legally." See MCL 388.1641, subsection 2. As the Michigan Department of Education considers implementation of this provision, we write to remind you of your Federal obligation to provide equal educational opportunities to all children residing within your state, and to ensure that state and district policies do not chill or discourage student participation, or lead to the exclusion of students, based on actual or perceived immigration status.

Enclosed is a copy of the Dear Colleague Letter jointly issued by the DOJ and the U.S. Department of Education on May 6, 2011; as noted in the Dear Colleague Letter, Federal law prohibits state and local education agencies from discriminating against students based on their race, color, or national origin. Title IV prohibits discrimination based on race, color, or national origin in public elementary and secondary education, 42 U.S.C. § 2000c-6, and Title VI bars discrimination on these bases in programs or activities that receive federal financial assistance. 42 U.S.C. § 2000d. Title VI regulations further bar districts from adopting practices that have the effect of discriminating on the basis of these characteristics. See 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2).¹ Further, in *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court held that a State may not deny a child equal access to public education based on his or her immigration status. Noting the "pivotal role of education" in our society, *id.* at 221, the Court concluded that "denying a discrete group of innocent children" the benefit of schooling provided to other students within the district was unconstitutional. *Id.* at 230.

¹ DOJ enforces Title IV, coordinates federal enforcement of Title VI, and enforces Title VI directly with respect to entities that receive financial assistance from DOJ, upon referral from another federal agency, or through intervention in an existing lawsuit. DOJ also enforces the Equal Educational Opportunity Act of 1974, 20 U.S.C. § 1701 et seq., which obligates state educational agencies and school districts to take appropriate action to overcome language barriers that impede English Language Learner students from participating equally in school districts' educational programs.

As the State Department of Education considers implementation of MCL 388.1641, subsection 2, we encourage you to review these Federal and Constitutional obligations, and to ensure that schools do not engage in practices, including requests for information, with either the purpose or result of denying students access on the basis of race, color, or national origin, or of chilling students' participation in school based on immigration status. We also request that you provide us with policies or guidance that you plan to distribute to schools regarding this provision, if any.

Thank you for your commitment to ensuring that all Michigan students are provided with equal educational opportunities, and that Michigan public elementary and secondary schools are in compliance with Federal civil rights law. If you have questions or concerns, please do not hesitate to contact Shaheena Simons, Deputy Chief, Educational Opportunities Section, Civil Rights Division, at (202) 305-3364, or Susan K. DeClercq, Assistant U.S. Attorney, Eastern District of Michigan, at (313) 226-9149.

Sincerely,



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Enclosure