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Attorney General Advisory:
Equal Access to Public Education for All Students Irrespective of Immigration Status

What the Supreme Court of the United States recognized in Brown v. Board of Education, 347 U.S. 483, 493 (1954), is as true today as it was then:

[E]ducation is perhaps the most important function of state and local governments. . . [I]t is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

This advisory is intended as a reminder that state and federal law require state educational agencies and local school districts to provide all elementary and secondary students with equal access to public education—irrespective of race, color, sex, gender identity, religion, national origin, sexual orientation, disability, *or immigration status*. Our schools play a critically important role in supporting vulnerable populations, and we have been heartened by affirmative statements in recent weeks by schools and districts in Massachusetts that have reiterated their commitment to serving immigrant communities in these uncertain times.

Enrollment practices that single out students based on their actual or perceived citizenship or immigration status violate state and federal law. Furthermore, equal access to public education means not only the right to enroll in school, but also the right to an education free from unlawful discrimination and harassment. The state and federal laws securing these rights include the following:¹

- The Massachusetts Student Anti-Discrimination Act provides that no person may be excluded from a public school in any town, or discriminated against with respect to obtaining the advantages, privileges, and courses of study of such public schools, on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation. (M.G.L. c. 76, § 5).

¹ Other relevant laws include the Massachusetts Fair Educational Practices Act, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities in Education Act, and Title IX of the Education Amendments Act of 1972.

- The Massachusetts Anti-Bullying Law prohibits, among other things, bullying by students or school staff on school grounds or at school activities. (M.G.L. c. 71, § 37O).
- Title IV of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin by public elementary and secondary schools. (42 U.S.C. § 2000c et seq.).
- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. (42 U.S.C. § 2000d et seq.).
- The Equal Educational Opportunities Act of 1974 requires, among other things, that schools provide English Language Learners with appropriate services to overcome language barriers that impede equal participation in instructional programs. (20 U.S.C. § 1701 et seq.)

In addition, in Plyler v. Doe, 457 U.S. 202 (1982), the Supreme Court held that public elementary and secondary schools may not deny any child residing in the applicable jurisdiction access to public education—whether the child is present in the country legally or not. Plyler made clear that a child’s immigration or citizenship status (or that of his or her parent or guardian) is not relevant to the child’s right to a public education. As the Court explained, “By denying these children a basic education, we 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.” Plyler, 457 U.S. at 223. Moreover, the Massachusetts Constitution, pt. II, c. 5, § 2, imposes a broad duty “to provide an education for *all* [] children, rich and poor, in every city and town in the Commonwealth at the public school level...” McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 606 (1993).

It is critical that all school districts and officials in the Commonwealth ensure that all children residing in their jurisdictions have equal access to public education by: (1) allowing children to enroll and attend school without regard to race, national origin, or immigration or citizenship status; (2) avoiding information requests that have the purpose or effect of discouraging or denying access to school on the basis of race, national origin, or immigration or citizenship status; and (3) protecting all students from bullying and harassment on the basis of race, national origin, or immigration or citizenship status.

The Office of the Attorney General is committed to enforcing the aforementioned laws and to securing the civil rights of all students in the Commonwealth. In order to assist you in meeting your legal obligations, we share the following guidance documents:²

² Although these documents were issued by a previous federal administration, the substance of the guidance continues to be helpful and consistent with the law.

- Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, U.S. Department of Justice & U.S. Department of Education (May 8, 2014).
- Fact Sheet: Information on the Rights of All Children to Enroll in School, U.S. Department of Justice & U.S. Department of Education (May 8, 2014).
- Resource Guide: Supporting Undocumented Youth, U.S. Department of Education (October 2015).

If you have questions or need further assistance, you may contact the Civil Rights Division of the Office of the Attorney General at (617) 963-2917 or <http://www.mass.gov/ago/civilrights>.

Dated: March 2, 2017