

**WELCOME BACK!!
SUMMER WRAP UP
2014**

Presented by:
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A BUSY SUMMER IN SCHOOL LAW!

- IMMIGRATION MAKES HEADLINES...AGAIN
- CHILD ABUSE TRAINING REQUIREMENTS
- COMMUNICATING WITH HOMESCHOOL PARENTS
- BRING YOUR OWN TECHNOLOGY POLICIES




DEALING WITH UNDOCUMENTED CHILDREN & PARENTS

- Many things have been said this summer about the “undocumented” or “displaced” school-aged children entering the State and attempting to enroll in Texas ISDs.
- In May of 2014, the DOE and DOJ jointly issued a “Dear Colleague” letter to elementary and secondary schools regarding the treatment of undocumented students.
- **What really matters for public schools?**
 - Student eligibility for admission
 - Requirements for student enrollment
 - Equal treatment, equal opportunities

PLYER V. DOE,
U.S. SUPREME COURT
1982

Court declared that denying enrollment of a student based on immigration status violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Federal law prohibits discrimination based on race, color, and national origin (among others), and requires equal treatment of students and parents regardless of citizenship or immigration status.



ELIGIBILITY FOR ADMISSION

- A child is entitled to enroll in your school district regardless of the citizenship or immigration status of the parent, guardian or child.
- An undocumented student, within the appropriate age range, who is residing within the boundaries of your school district is entitled to admission to the same extent as a legal resident residing within district boundaries.
- Review Board Policy FD (LEGAL) and (LOCAL), summarize the requirements for admission.
 - These policies, as well as your other rules and practices, must be applied equally to all students seeking admission, regardless of actual or perceived citizenship status.



REQUIREMENTS FOR ENROLLMENT

- Schools should steer clear of any rules or practices which could prevent or discourage a parent, guardian, or child from enrolling due to citizenship or immigration status.
- Even if your school does not bar the admission of undocumented students, there are other phases of the admissions and enrollment process that can prevent or discourage enrollment:
 - Requiring documents that only a legal resident would have access to (e.g., social security card, drivers license, U.S. birth certificate)
 - Failure to explain the purpose and use of information being requested (e.g., this information will be used only to verify the child's age)
- Review your policies and any publications that reflect enrollment requirements (like the district's website).



CHILD ABUSE & NEGLECT TRAINING REQUIREMENTS

- All district employees must receive training on child abuse and neglect, including the duty to report, prevention techniques, and recognition of abuse and neglect.
- TEA Issued a To the Administrator Addressed letter on July 31, 2014.
- Mandatory timetable by which certain employees must complete the training.
- Training may be obtained from a TEA-approved provider or another individual or entity, as long as the content complies with the statutory requirements.
- The district must maintain a record of each employee who completes the training.

TRAINING DEADLINES

By September 30, 2014

**K-5: Teachers
Campus principals
Bus drivers**

December 31, 2014

**Other: Teachers
Campus principals
Bus drivers**

May 31, 2015

All remaining school staff



FACTS:

- The McIntyre family resided in the El Paso ISD. The parents claimed to be homeschooling their five minor children after withdrawing them from private school.
- EPISD received anonymous tips and information from the children's grandmother indicating that no learning was occurring in the home.
- At trial, an uncle testified that he never saw learning taking place in the home, and that he overheard one of the children state that they didn't need to do schoolwork because they were going to be "raptured."

EL PASO ISD VS. MCINTYRE

8TH COURT OF APPEALS
EL PASO, TEXAS

Can a school district request information from a homeschool parent in order to verify that the children are receiving the required instruction for purposes of enforcing compulsory attendance?

EL PASO ISD VS. MCINTYRE

FACTS:

- The parents continually refused to provide any information about the curriculum being used, despite multiple phone calls and home visits from EPISD.
- The oldest child ran away from school at 17 to "attend school." The child was unable to describe her home school education, and the parents refused to provide any information to assist, and so she was placed 1 1/2 years behind her age group.
- The parents refused to sign the EPISD home school verification form.
- Truancy complaints were eventually filed based on the parents' refusal to meet home school verification requirements. The complaints were ultimately dismissed when it was determined that the family members were not willing to testify.

EL PASO ISD VS. MCINTYRE

HISTORY OF THIS ISSUE:

- *TEA v. Leeper*, Texas Supreme Court 1994
 - Home school parents and curriculum providers sued state officials challenging the application of state compulsory attendance laws to home schools.
 - Court concluded that a home school may be exempt from the compulsory attendance laws, like a private or parochial school, if children are taught in a bona fide manner from a curriculum designed to meet basic education goals.

SUIT FILED:

- The parents filed suit seeking declaratory and injunctive relief and damages alleging violation of the Education Code, the Texas Religious Freedom Restoration Act (TRFRA), and the Texas and U.S. Constitutions.

EL PASO ISD VS. MCINTYRE

Do Home School Parents Have to Use the District Grievance Process?

- Yes.
- The parents argued that, for several reasons, they were not required to exhaust administrative remedies (i.e., complete the district grievance process) prior to filing their lawsuit.
- The court disagreed, and ruled that the parents should have exhausted the district's grievance process before going to court.

Were the District's actions appropriate?

- Yes.
- TEC 25.091(b) authorizes an attendance officer to "investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer."
- The statute allows an attendance officer to use his or her discretion in determining how to conduct the investigation and whether to file a truancy complaint.

EL PASO ISD VS. MCINTYRE

Can an attendance officer require evidence of home school curriculum?

- Neither case law nor state statute precludes an attendance officer from requiring a home school parent to produce evidence regarding the chosen curriculum.

Is there an absolute Constitutional right to home school?

- "No parents have ever prevailed in any reported case on a theory that they have an absolute constitutional right to educate their children in the home, completely free of any state supervision, regulation, or requirements."
- There is no absolute constitutional right to home school. Home school has to meet the criteria for the private or parochial school exemption from compulsory attendance.

What are the take-aways from El Paso ISD vs. McIntyre?

- **Attendance Officers have significant discretion in investigating and filing truancy complaints.**
 - If an attendance officer, during a legitimate investigation of compulsory attendance violations, determines that additional information is needed, s/he may request or require it from the parent/guardian.
- **Home school parents must comply with reasonable requests from the school for information necessary in determining compliance with compulsory attendance laws.**
- **Home school parents, just like school district parents, can use the district's formal grievance process.**
 - In certain instances, just like school district parents, home school parents may be required to complete the process before taking further legal action.

B.Y.O.T. POLICIES

- A recent decision from the Commissioner of Education warrants review of school district policies related to student use of district or personal electronic devices.
- *Learned v. Princeton ISD*, (Comm'r 2014)
 - Parent filed a grievance challenging the district's BYOT policy, alleging it violated the parents' right to consent to the recording of her child under Education Code 26.009.
 - The district's BYOT policy:
 - Allowed students to record lectures and activities in class that are linked to specific learning outcomes;
 - Also allowed students to make recordings outside of the classroom.

Texas Education Code § 26.009

- (a) An employee of a school district must obtain the written consent of a child's parent before the employee may:
- (2) Make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice.
- (b) An employee of a school district is not required to obtain the consent of a child's parent ... if the videotape or voice recording is to be used only for:
- (1) Purposes of safety...
 - (2) A purpose related to a cocurricular or extracurricular activity;
 - (3) A purpose related to regular classroom instruction; or
 - (4) Media coverage of the school.

LEARNED V. PRINCETON ISD

- The parent alleged the policy authorized recordings to be made of her child outside of school, which violated her right to consent to a recording being made under TEC 26.009.
- The district argued that the statute did not apply, because the statute did not authorize recording at school except for purposes covered by an exception to parental consent under TEC 26.009.
- **AND THE WINNER IS...**
 - The parent!
 - The Commissioner held that the part of the BYOT policy that allowed recordings in school related to classroom instruction complied with 26.009.
 - But the Commissioner found that the part of the policy authorizing recordings to be made outside of school did NOT comply with 26.009, as the school was authorizing the creation of a recording, without parental consent, and the recording did not fall into an exception.

LEARNED V. PRINCETON ISD

- The Commissioner has expanded the interpretation of 26.009 to limit a district's ability to authorize students to film one another.
- Additionally, language in the district's BYOT policy merely authorizing students to use their own devices to record one another off campus and outside of the district's supervision and control was found to violate 26.009.
- Check the language of your technology and device policies regarding the recording of students by employees or other students,



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