

What if Plyler v. Doe were overturned?

A movement to overturn the landmark Supreme Court decision requiring public education for undocumented students raises questions about what that would mean for California schools

Introduction

For over 40 years, the law of the United States has been that undocumented children are entitled to a free public education under the 14th Amendment of the U.S. Constitution. Since the landmark ruling by the Supreme Court that created this legal principle, *Plyler v. Doe*, there have been numerous attempts at the state and federal level to circumvent it to deny education to undocumented children. While previous attempts have been futile, there has been a resurgence in such efforts accompanied by calls for the Supreme Court to overturn *Plyler*. Accordingly, CSBA has taken steps to understand and project the potential consequences for local educational agencies in California were *Plyler* to be overturned.

Current law

Plyler, along with California law, compels school districts to provide education to all students regardless of their immigration status. Although education is not a fundamental right protected by the language of the U.S. Constitution, it is protected by the California Constitution and through statute. (Compare *San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1, 35, with *Serrano v. Priest* (1976) 18 Cal.3d 728, 765; see Ed. Code, § 200.) Were the

Supreme Court to overturn *Plyler*, current federal and state laws remain applicable.

The education of undocumented students involves two regulated fields — education and immigration. Education is a power reserved for the states. (See *Nat'l Fed'n of Indep. Bus. v. Sebelius* (2012) 567 U.S. 519, 537.) But legislating and regulating immigration is a sweeping federal power. (*Arizona v. U.S.* (2012) 567 U.S. 387, 394.) Thus, if *Plyler* were overturned, California school districts must still educate undocumented students unless a court deems that a contrary federal law preempts California law.

Of note, there is a federal law that could be amended to preempt California law in this area. Title 8, section 1621 of the U.S. Code prohibits states from providing individuals that are not “qualified aliens” a public benefit, unless states enact a law to provide for such benefits. (8 U.S.C. § 1621, subd. (d) [hereinafter “Section 1621”].) The definition of public benefits includes things like welfare, public or assisted housing, and post-secondary education, but it does not include basic public education below the post-secondary level. (8 U.S.C. § 1643, subd. (a)(2).) Were Congress to amend Section 1621 or pass a new law invoking an express prohibition against the educa-

tion of students in grades K-12, then California law could be challenged based on the theory of federal preemption. However, the overturning of *Plyler* alone without additional federal action would not change the status quo in California. California law compels school districts to educate all children regardless of immigration status. (Ed. Code, § 200, 220, etc.)

Education is not a power specifically delegated to the federal government, so the provision and regulation of education primarily falls to the states. (See U.S. Const., amend. X.) However, Congress can and does condition federal funds on compliance with federal laws, pursuant to Congress' Spending Clause authority. (U.S. Const., art. I, § 8, cl. 1.) To this end, assuming the reversal of *Plyler*, the federal government could seek to promote or enforce state compliance with policy goals regarding the education of undocumented students (or lack thereof) by withholding some or all of the funding it directs to the states for the purposes of public education by way of Spending Clause statutes (e.g., the Individuals with Disabilities Education Act, Title IX, Section 504, etc.).

Even then, beyond requiring compliance with federal law, the Spending Clause does not give Congress unfettered authority to place conditions on its funds. Congress is not permitted to place coercive conditions on funds spent through the Spending Clause. (*Sebelius*, 567 U.S. at 580-82.) Therefore, any condition that would restrict federal funding to states that educate undocumented children would need to be closely analyzed to determine whether the condition is coercive or a "mild encouragement."

It's impossible to foresee every consequence in a hypothetical overturning of *Plyler*, but the consequences of such an event will depend on other actions by the federal government. If *Plyler* were struck down alone, without other changes to federal law, California's legal system would continue to permit and protect the right and access to education by the states' undocumented students.

