

Comments on:

U.S. Department of Education, Request for Information Regarding the Nondiscriminatory Administration of School Discipline, Docket ID ED–2021–OCR–0068

SUBMITTED BY THE NATIONAL IMMIGRATION LAW CENTER

The Department of Education (ED) seeks comments on its “request for information” (RFI) to inform determinations about the types of policy guidance, technical assistance, or other resources that could assist pre-K through grade 12 schools with “improving school climate and safety, consistent with the civil rights laws that OCR enforces, to ensure equal access to education programs and activities.”¹ The National Immigration Law Center (NILC) submits the following comments in response to requests Nos. 2, 4, 5, and 7.

Established in 1979, NILC is one of the leading organizations in the U.S. exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. For many years, NILC has published articles, provided technical assistance, and litigated on issues pertaining to equitable access to education, immigrant student safety, and immigration enforcement.

INTRODUCTION

The Pew Research Center estimates that 725,000 undocumented students were enrolled in grades K-12 as of 2014.² Nearly 5.1 million children, including U.S. citizens and immigrants, under age 18 have at least one undocumented parent.³ These students have a right to equal access to education in this country. Under *Plyler v. Doe*, all children, regardless of immigration status, have a constitutional right to attend K-12 public schools.⁴ Correspondingly, public schools cannot impose requirements or other practices that may chill access to public education for immigrant students or students with immigrant family members, such as requiring students or their parents to provide birth certificates or Social Security cards as part of enrollment, test-taking, or participation in extracurricular activities.

Despite the promise of *Plyler*, the encroachment of federal immigration law enforcement activities on or near schools impedes equal access to an education and endangers the safety, security, and academic opportunities of immigrant students. Over-policing in schools and certain school discipline policies,

¹ Request for Information Regarding the Nondiscriminatory Administration of School Discipline, Office for Civil Rights (OCR), U.S. Department of Education (ED), Docket ID ED–2021–OCR–0068, 86 Fed. Reg. 30449-30453 (June 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-06-08/pdf/2021-11990.pdf>, [hereinafter “RFI”].

² See Jeffrey S. Passel & D’Vera Cohn, *Children of Unauthorized Immigrants Represent Rising Share of K-12 Students*, Pew Research Center (Nov. 17, 2016), <https://www.pewresearch.org/fact-tank/2016/11/17/children-of-unauthorized-immigrants-represent-rising-share-of-k-12-students/>.

³ See Bari Walsh, *Supporting Undocumented Students and Mixed-Status Families*, Harvard Graduate School of Education (May 1, 2018), <https://www.gse.harvard.edu/news/uk/18/05/supporting-undocumented-students-and-mixed-status-families>.

⁴ 457 U.S. 202 (1982); see also Ignacia Rodriguez, *On Plyler v. Doe’s 35th Anniversary, This Landmark Supreme Court Decision Must Be Honored and Protected*, NILC: The Torch (June 15, 2017), <https://www.nilc.org/2017/06/15/plyler-v-doe-must-be-honored-and-protected/>.

which can undermine the safety of all students, compounds the harms for immigrant and undocumented youth. As an extension of the school-to-prison pipeline, the school-to-prison-to-deportation pipeline disproportionately pushes Black and Brown immigrant youth and other undocumented students into the criminal justice system, which in turn funnels them into the immigration enforcement system. Schools participate in this pipeline primarily through the use of police on their campuses or referrals to law enforcement agencies.

POLICING IN SCHOOLS HARMS IMMIGRANT STUDENTS [RESPONSES TO REQUEST NOS. 2 & 4(f)]

Referrals to and the resulting interactions with school police, school resource officers (SROs), or other law enforcement agencies—including the Department of Homeland Security (DHS) and its component agencies, U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS)—put immigrant students and family members at risk of detention, family separation, and deportation. For these students, police presence in schools and school-based interactions with federal immigration agents create a climate of fear, anxiety, and stress, affecting student performance and success, and preventing schools from advancing their educational mission.

- **SCHOOL TO PRISON TO DEPORTATION: INTERACTIONS WITH SCHOOL POLICE LEAD TO IMMIGRATION INVESTIGATIONS**

Studies overwhelmingly demonstrate that police presence in schools lead to more law enforcement encounters with students, including student arrests and law enforcement referrals.⁵ SROs are uniformed and sworn law enforcement officers assigned to work at a school site on a full-time basis, purportedly to protect and enhance student safety. The presence of SROs often escalates to arrests for conduct that school officials and youth behavioral experts might otherwise consider a classroom disruption or behavior that does not create a legitimate threat to school safety. Some examples include the arrest of a 6-year-old for throwing a tantrum and the arrest of a 12-year-old student for doodling on her school desk.⁶

SROs also arrest students of color, particularly Black and Brown students, at disparate rates.⁷ Nationwide, Black students are three times as likely to be arrested as their white classmates, with Black

⁵ See, e.g., Emily M. Homer & Benjamin W. Fisher, *Police in Schools and Students Arrest Rates Across the United States*, 19 *Journal of School Violence* 192 (2019); Benjamin W. Fisher & Emily A. Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools*, 1 *Adolescent Research Review* 217 (2016); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 *Journal of Criminal Justice* 280 (2009); see also American Civil Liberties Union (ACLU), *Bullies in Blue: The Origins and Consequences of School Policing* 17-25 (2017), https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf.

⁶ See Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School*, *N.Y. Times* (Feb. 27, 2020), <https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html>; Stephanie Chen, *Girl's Arrest for Doodling Raises Concerns About Zero Tolerance*, *CNN* (Feb. 18, 2010), <http://www.cnn.com/2010/CRIME/02/18/new.york.doodle.arrest/index.html>; see also Susan Ferriss, *An Epidemic of Questionable Arrests by School Police*, *Huffington Post* (Dec. 11, 2015), https://www.huffpost.com/entry/san-bernardino-arrests_n_5669b21ce4b009377b24119e.

⁷ See Kelly Hinchcliffe & Tyler Dukes, *NC's 'Alarming' Disparity of Black Student Arrests Among Worst in Country*, *WRAL* (last updated July 13, 2018), <https://www.wral.com/nc-s-alarming-disparity-of-black-student-arrests-among-worst-in-country/17515727/>; ACLU, *supra* note 5 at 22.

girls facing a risk of arrest at over four times the risk faced by white girls.⁸ Central American immigrant students from Honduras, El Salvador, and Guatemala as well as Southeast Asian American children of refugees, are also harmed disproportionately by school police presence.⁹

For immigrant students, even a single interaction with school police and the criminal justice system carries the additional risk of immigration detention and deportation. Every year, local police send thousands of individuals into the immigration enforcement system through a web of largely inscrutable resource- and information-sharing processes.¹⁰ Local police work with ICE to support immigration enforcement directly and indirectly through mechanisms including but not limited to: providing physical access to jails and detained individuals; facilitating technological access to law enforcement databases, information systems, and records; participating in joint operations; as well as communicating informally with ICE agents to share resources and information.

In the education context, investigations and other information collected by school police about immigrant students regularly trigger ICE's radar. For example, in a Tucson high school, an SRO interrogated a 15-year-old undocumented student accused of stealing school property and thereafter contacted federal immigration agents to transfer the student into ICE custody.¹¹ Increasingly, SROs and school police have targeted immigrant youth with unfounded accusations of gang membership or affiliation. School incident reports and SRO write-ups detailing vague and inaccurate suspicions of a student's purported gang activity such as wearing a certain color or type of clothing are routinely uploaded into law enforcement gang databases and other criminal justice databases—which are often accessible by federal immigration officers—and are used as foundations for deportation cases.¹² For example, a Long Island high school sophomore who scribbled doodles of his school mascot was accused of having gang paraphernalia.¹³ These doodles led not only to his suspension but also, due to a routine SRO write-up shared with immigration authorities, resulted in his arrest, detention by ICE for over a year, and eventually his deportation. Other similar examples include:

- In March 2018, ICE detained a Baltimore student for six months after an SRO reported that the student was a part of a group that had threatened another classmate. A judge reviewing the case concluded that a “clear error” had been made.¹⁴

⁸ Amir Whitaker et al., *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students*, ACLU 5, https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf.

⁹ See generally Asian Americans Advancing Justice-Los Angeles et. al, *Asian Americans & Pacific Islanders Behind Bars: Exposing the School to Prison to Deportation Pipeline* (Dec. 2015), https://www.searac.org/wp-content/uploads/2018/04/18877-AAPIs-Behind-Bars_web.pdf.

¹⁰ See generally NILC, *Untangling the Immigration Enforcement Web* (Sept. 2017), <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

¹¹ Antonia N. Farzan, *Could School Resource Officers Become a Deportation Force in Trump's America?*, Phoenix New Times (Feb. 28, 2017), <https://www.phoenixnewtimes.com/news/could-school-resource-officers-become-a-deportation-force-in-trump-s-america-9114076>.

¹² See Hannah Dreier, *He Drew His School Mascot — and ICE Labeled Him a Gang Member*, ProPublica (Dec. 27, 2018), <https://features.propublica.org/ms-13-immigrant-students/huntington-school-deportations-ice-honduras/>; Sarah Gonzalez, *MS-13 Gang Crackdown Relies on “Questionable” Evidence from Schools*, WNYC (Aug. 7, 2017), <https://www.wnyc.org/story/ms13-gang-police-crackdown-schools/>. See generally Nermeen Arastu et al., *Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers* (May 2018), https://mk0newyorkimmign9f3m.kinstacdn.com/wp-content/uploads/2018/06/SweptUp_Report_Final-1.pdf.

¹³ Dreier, *supra* note 12.

¹⁴ *Id.*

- In January 2018, ICE detained a Houston student who had been harassed by another classmate after an SRO wrote him up for fighting.¹⁵
- In Boston, ICE relied on school incident reports, shared by the Boston School Police, to detain several students as alleged gang members. One student, an immigrant from El Salvador, was detained following an incident report listing him as a gang associate.¹⁶

Even where the harms stop short of deportation, interactions with the criminal justice system can impede students' ability to apply for immigration relief. Generally, determining eligibility for immigration relief and/or citizenship involves an assessment of school enrollment and attendance as well as police records and criminal history.¹⁷ For immigrant youth, "a record can mean federal immigration agencies will see the arrest(s), adjudication(s), or conviction(s) in the results of a biometrics search if the student applies for an immigration benefit such as a U visa or Special Immigrant Juvenile Status (SIJS). This can result in complications or denials of the youth's application for a U visa, SIJS, and other paths to legal status."¹⁸ As such, school discipline policies and practices that move students into the criminal justice system or impose severe disciplinary measures that affect school attendance have significant impacts on an immigrant student's immigration outcomes.

- **SCHOOLS' DIRECT REFERRALS TO IMMIGRATION AGENCIES CREATE UNSAFE SCHOOL CLIMATES**

School referrals to federal immigration enforcement and other school-based interactions with ICE or CBP carry the same, if not greater, risks of harm. Such actions allow immigration agencies to work with schools directly to identify and investigate students. Providing ICE and CBP direct access to school campuses and/or student information—including any information that would implicate immigration or citizenship status—therefore accelerates the deportation process. Schools that relinquish such access, whether physical or digital, usually do so reluctantly or under a belief that collaboration or compliance with any request by an immigration agent is mandatory.

Federal immigration enforcement agencies largely rely on consent and open access to effectuate their enforcement activities. In recent years, ICE and CBP have used increasingly aggressive ruses and tactics to coerce immigrants and the general public to cooperate with federal immigration enforcement, which include professing to be local "police" or misrepresenting that they have a judicial warrant requiring entry into a premises.¹⁹ Although schools legally can refuse assistance in locating students, responding to requests to detain individuals (called immigration detainer requests or hold requests), providing

¹⁵ See Suzanne Gamboa, *In Houston, Outrage Over a School Arrest that Landed a Student in Immigration Detention*, NBC News (Feb. 15, 2018), <https://www.nbcnews.com/news/latino/houston-outrage-over-school-arrest-landed-student-immigration-detention-n848141>.

¹⁶ See Shannon Dooling, *Minor Fight in a Boston School Landed One Student in ICE Custody, Advocates Fear*, WBUR (Jan. 26, 2018), <https://www.wbur.org/news/2018/01/26/boston-student-ice-custody>.

¹⁷ Saunjuhi Verma et al., *The School to Deportation Pipeline*, 673 *Annals of the American Academy of Political and Social Science* 209, 211 (2017), available at <https://www.jstor.org/stable/10.2307/26582249>.

¹⁸ Nikki Marquez & Rachel Prandini, *The School to Prison to Deportation Pipeline 2* (February 2018), https://www.ilrc.org/sites/default/files/resources/school_delinq_faq_nat-rp-20180212.pdf.

¹⁹ See Joel Rubin, *It's Legal for an Immigration Agent to Pretend to Be a Police Officer Outside Someone's Door. But Should It Be?*, Los Angeles Times (Feb. 20, 2017), <https://www.latimes.com/local/lanow/la-me-immigration-deportation-ruses-20170219-story.html>.

confidential information, or allowing access to many non-public areas of campus and school sites,²⁰ educators who are unaware of their legal rights may acquiesce to these tactics and consent unwittingly to an ICE demand, thereby compromising students' safety as well as their obligations to the student community.

Regardless of the institution's intent, a school's actual or perceived collaboration with ICE or CBP seriously damages relationships with students and immigrant families and contributes to a climate of fear and anxiety on the campus. As discussed below, hostile school climates that result from the presence of and referrals to police, ICE, and CBP threaten the attendance, academic achievement, equal access to and participation of immigrant students in educational programs.

POLICE AND IMMIGRATION ENFORCEMENT PRESENCE IN SCHOOLS UNDERMINES IMMIGRANT STUDENTS' ABILITY TO LEARN, ACADEMIC ACHIEVEMENT, AND MENTAL HEALTH -- [RESPONSE TO REQUEST NO. 7]

Police presence jeopardizes, rather than enhances, student safety. While there is no clear evidence that police presence in schools improves school safety, several studies demonstrate that the presence of police in schools make students feel less safe.²¹ For youth of color in particular, police presence often triggers stress, fear, trauma, and anxiety, which can inhibit students' ability to focus on academics and can cause, rather than mitigate, behavior misinterpreted as disciplinary problems.²²

Police presence creates anxiety for immigrant and U.S. citizen youth, but immigrants may experience additional stress related to the risk of detention and deportation, including concerns about the safety of their loved ones. The risk of "[b]eing identified as deviant by authority figures, including teachers and local police, is the beginning of a pathway that may lead to a criminal record and deportation."²³ Immigrant youth, particularly those that arrive in the U.S. as unaccompanied minors, are already at high risk for mental health issues, including higher rates of anxiety, depression, conduct problems, and post-traumatic stress disorder.²⁴ A parent or family member's detention or deportation also has severe impacts on a student's mental health, childhood development, and school performance.²⁵ School referrals to and collaborations with police and federal immigration enforcement exacerbate these traumas and behavioral effects and serve as a frequent reminder of the pervasive threat of deportation.

²⁰ NILC, Practice Advisory: The Legal Authority for "Sanctuary" School Policies 2 (Aug. 2018), <https://www.nilc.org/wp-content/uploads/2018/08/sanctuary-schools-practice-advisory-2018.pdf>.

²¹ See, e.g., Jonathan Nakamoto et al., *High School Students' Perceptions of Police Vary by Student Race and Ethnicity* 1 (2019), <https://www.wested.org/wp-content/uploads/2019/05/resource-high-school-students-perceptions-of-police.pdf>; Kenneth A. Anderson, *Does More Policing Make Middle Schools Safer?*, Brookings (Nov. 8, 2018), <https://www.brookings.edu/blog/brown-center-chalkboard/2018/11/08/does-more-policing-make-middle-schools-safer/>; Matthew T. Theriot & John G. Orme, *School Resource Officers and Students' Feelings of Safety at School*, 14 *Youth Violence and Juvenile Justice* 130, 141 (2016).

²² See Whitaker, *supra* note 8, at 7; Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, *American Sociological Review* (Feb. 11, 2019), <https://journals.sagepub.com/doi/full/10.1177/0003122419826020>.

²³ Verma, *supra* note 17, at 224.

²⁴ See Kiara Alvarez & Margarita Alegría, *Understanding and Addressing the Needs of Unaccompanied Immigrant Minors*, *American Psychological Association* (June 2016), <https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors>.

²⁵ Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* 41-51 (Feb. 2010), <https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF>.

Often, a single student’s fear of immigration enforcement can have a ripple effect within a school, causing other students to feel unsafe. The resulting school climate of fear and instability greatly affects the health and well-being of immigrant students, with increased instances of bullying and racial animus, student mental and physical unwellness, absenteeism as well as declines in student performance.²⁶ In a 2018 survey of 730 schools across the U.S. on the impact of immigration enforcement on education, ninety percent of school administrators reported behavioral or emotional problems among immigrant students; sixty-eight percent observed an uptick in absenteeism; and seventy percent reported academic decline in immigrant students.²⁷ The threat of immigration enforcement and fears that sensitive information will be released to and used by federal immigration authorities have caused public school enrollment and attendance to drop dramatically. One school had a 60% decrease in attendance after an immigration raid,²⁸ while in another school, 500 students stayed home the day after a massive immigration raid of a nearby meatpacking plant.²⁹

These consequences, though serious, pale in comparison to the direct harm of immigration enforcement. Although classified as civil detention under the law, immigration detention facilities are largely indistinguishable from their criminal incarceration system counterparts: detained immigrants are held in punitive, prison-like conditions.³⁰ Immigration detention not only disrupts students’ education and removes them from their family, schools, and other supportive networks, but also imposes serious physical and mental harm related to neglect, abuse, poor conditions of confinement, and economic and social stressors. Deportation can cause even more harm. As long acknowledged by the nation’s highest court, “deportation is a drastic measure and at times the equivalent of banishment or exile,”³¹ often to a country that the student has little connection to or puts the student at risk of danger. The effects of deportation reverberate throughout a student’s community and networks, separating families and affecting classmates, teachers, and entire schools.

Given the above-discussed consequences on immigrant students’ education, well-being, and opportunity to live and remain in their communities, police and federal immigration enforcement have no place in schools.

²⁶ See *id.*; Jill Barshay, *Early Evidence of a “Trump Effect” on Bullying in Schools*, The Hechinger Report (Sept. 17, 2018), <https://hechingerreport.org/early-evidence-of-a-trump-effect-on-bullying-in-schools/>.

²⁷ See Patricia Gándara & Jongyeon Ee, *U.S. Immigration Enforcement Policy and Its Impact on Teaching and Learning in the Nation’s Schools*, UCLA Civil Rights Project (Feb. 2018), <https://www.civilrightsproject.ucla.edu/research/k-12-education/immigration-immigrant-students/u.s.-immigration-enforcement-policy-and-its-impact-on-teaching-and-learning-in-the-nations-schools/Immigration-enforcement-on-schools-093018.pdf>.

²⁸ Nicole Acevedo, *Immigration Policies, Deportation Threats Keep Kids Out of School, Report States*, NBC News (Nov. 20, 2018), <https://www.nbcnews.com/news/latino/immigration-policies-deportation-threats-keep-kids-out-school-report-states-n938566>.

²⁹ Catherine E. Shoichet, *ICE Raided a Meatpacking Plant. More than 500 Kids Missed School the Next Day*, CNN (Apr. 12, 2018), <https://www.cnn.com/2018/04/12/us/tennessee-immigration-raid-schools-impact/index.html>.

³⁰ Altaf Saadi et al., *Understanding US Immigration Detention*, 22 *Health and Human Rights Journal* 187 (2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7348446/>; see also Stacy Brustin, *I Toured an Immigration Detention Center. The Prison-like Atmosphere was Mind-numbing*, USA Today (May 16, 2019), <https://www.usatoday.com/story/opinion/voices/2019/05/16/ice-immigration-detention-center-like-prison-otero-column/1190633001/>.

³¹ *Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); see also *Jordan v. De George*, 341 U.S. 223, 231 (1951) (describing the “grave nature of deportation”).

WHAT THE DEPARTMENT OF EDUCATION SHOULD DO TO CREATE POSITIVE, INCLUSIVE, SAFE, AND SUPPORTIVE SCHOOL CLIMATES [RESPONSE TO REQUEST NO. 5]

During the Trump administration, many elementary, secondary schools and colleges adopted policies to protect their students and campus communities by limiting immigration enforcement, including collaboration by campus police, to the greatest extent possible, by adopting “sanctuary,” “welcoming,” or “safe zone” policies. Sanctuary school policies reinforce existing laws, policies, and constitutional rights and generally include four major provisions that (i) protect student and family information and limit data-sharing with federal immigration authorities; (ii) restrict immigration agents and other law enforcement access to and presence on school campuses; (iii) prohibit campus security from collaborating with federal immigration authorities; and (iv) provide resources and information for immigrant students and their families.³²

The Department of Education (ED) and the Department of Justice (DOJ) should work together to strengthen these local efforts by:

- **Issuing joint guidance to schools on ending the use and presence of law enforcement in schools and prohibiting the sharing of student information and records with police and ICE.** Guidance should recommend that schools replace punitive policies and practices that unnecessarily involve law enforcement, with trauma-informed and race-conscious practices that resolve conflict and support students’ behavioral needs effectively. Directing funding and resources toward hiring critical personnel including counselors, mental health professionals, and nurses will allow schools to address student behavior appropriately and safely. Guidance therefore should advise against entering into Memoranda of Understanding (MOUs) with law enforcement agencies that are ill-equipped to resolve conflict or improve student safety. Similarly, schools should be advised against engaging in other practices, including the sharing of student information with police and/or federal immigration agencies, that could put students in harm’s way.
- **Working together to bolster protections for student information and data privacy to the fullest extent possible under the law.** The Family Educational Rights and Privacy Act (FERPA) prohibits schools from unilaterally turning over student records or their personally identifiable information to third parties without written consent of a parent or guardian *unless* an exception applies. FERPA authorizes Education Secretary Cardona to enforce FERPA protections over student information by threatening to or denying federal education funds from schools that violate the Act. Accordingly, ED should assume a more robust role in monitoring complaints as well as seeking out potential FERPA violations that involve impermissible information-sharing between SROs, police, and federal immigration officers. Beyond FERPA, ED should issue guidance that strengthens protections of student data, including the data that the ED collects directly, such as information submitted on the Free Application for Federal Student Aid (FAFSA). ED must ensure that information relating to immigration or citizenship status as well as social security number, or the lack thereof, is not collected where it is not required; and where collection is required, guidance should direct schools not to share this or other personal information about students or their family members unless disclosure is required (not merely permitted) by law.

³² See NILC, *Model Campus Safe Zones Resolution Language (K-12)* (Dec. 2016), <https://www.nilc.org/issues/immigration-enforcement/campus-safe-zones-language-k-12/>.

- **Reinforcing a joint commitment to protect and defend equal educational opportunities for immigrant children.** The ED Office for Civil Rights (OCR) and DOJ Educational Opportunities Section should continue the practice of submitting statements of interests in key education cases as well as filing affirmative lawsuits to hold school districts accountable for policies and practices that disrupt immigrant access to education. Following Judge Hanen’s disappointing federal district court ruling in *State of Texas v. United States*, NILC appreciates the swift action by OCR to reiterate the federal obligation of America’s public schools to provide equal educational opportunities to all children, regardless of immigration status, as required by the Supreme Court’s holding in *Plyler v. Doe*.³³ In addition to reinforcing existing guidance on the rights of undocumented students and the corresponding obligations on schools, OCR’s blog post shared Secretary Cardona’s promise that the “U.S. Department of Education’s Office for Civil Rights will continue to safeguard those rights for all students, including those affected by the ruling.”³⁴ For the reasons stated in the above comments, NILC urges OCR to continue to fight to dismantle practices and policies that disrupt the right of students to attend public school, including harsh school discipline, police presence in schools, and collaboration with state and federal law enforcement agencies.

CONCLUSION

The consequences of school-based interactions involving police, SROs, or other law enforcement agencies are severe for immigrant students and their families. While evaluating what can or should be done to improve school climate and safety, consistent with civil rights laws, ED must recognize the intersectional and disparate impacts on students—including immigrant youth, students of color, LGBT students, girls, and students with disabilities—and consider what safety means and looks like for all students, regardless of immigration status.

³³ See *Students, Immigration Status, and the Right to Public Education*, U.S. Department of Education: Office for Civil Rights Blog (Jul. 19, 2021), <https://www2.ed.gov/about/offices/list/ocr/blog/20210719.html>.

³⁴ *Id.*