

Report on Education Access in Kentucky for Undocumented Immigrants Executive Summary 2017



About the Educational Access Project:

The HRAP Education Access project seeks to explore constitutional issues at work in the Kentucky public education system. The Education Access project uses a computer survey to measure compliance with federal enrollment requirements within the state's public schools with the highest proportion of foreign born students. Requiring students to produce unnecessary enrollment documents creates a chilling effect on the right to public education. By monitoring levels of compliance, HRAP hopes to shed light on the burdens foreign-born children face when they enroll in Kentucky public schools and promote a culture of compliance.

About the Human Rights Advocacy Program:

The first phase of the Program focused on liaising with local and regional human-rights-related organizations to identify human rights issues in the community and to understand the work of legal and other services providers to the international community. As it became clear that the needs of vulnerable populations, such as noncitizens and refugees, extend beyond legal services alone, the list of organizations and providers that should be included in the discussion grew. The need for multiple services is often interrelated and to isolate one component for study would provide incomplete and less helpful information about the role that the Program can play.

The Program ultimately liaised with a variety of legal, medical, educational, and social service providers. The purpose of this work was to understand the scope and range of the services provided and to begin to identify any potential gaps in information available to the public about human rights issues, as well as information about the resources and the services available. This report is designed to share this information with the larger community and those organizations providing services.

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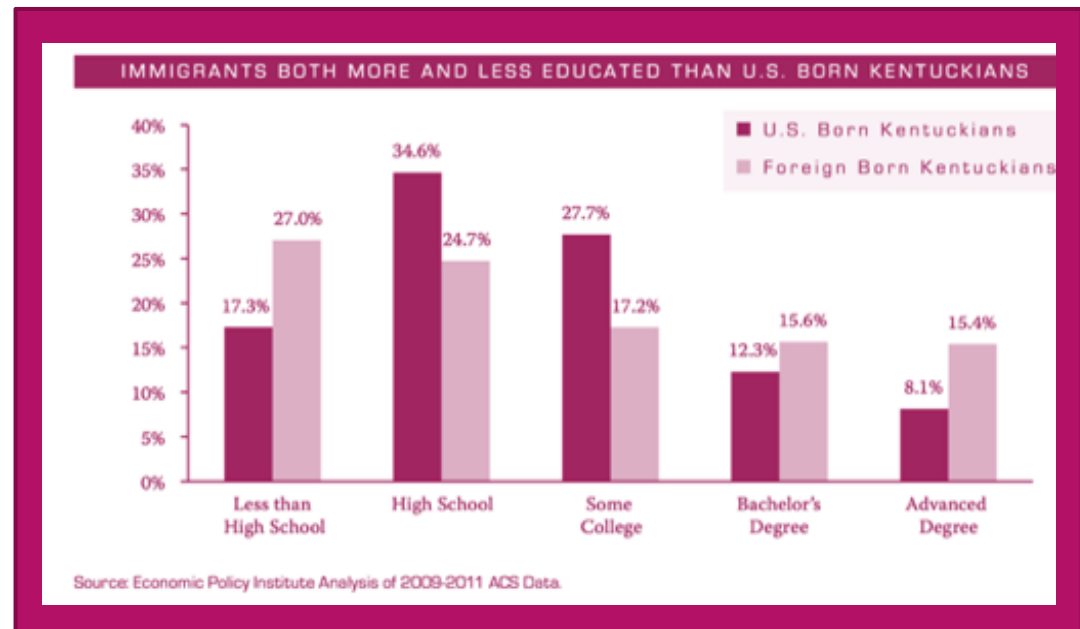
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Education Access Status Update: Executive Summary 2017



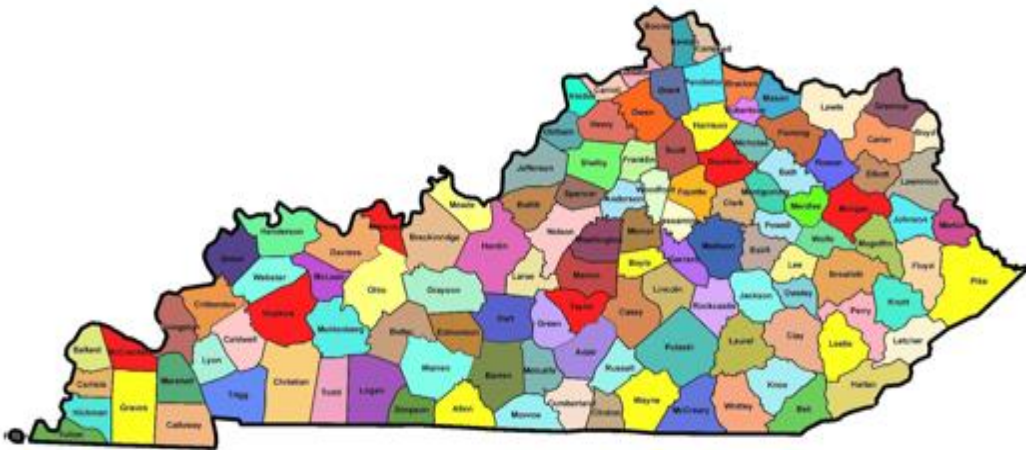
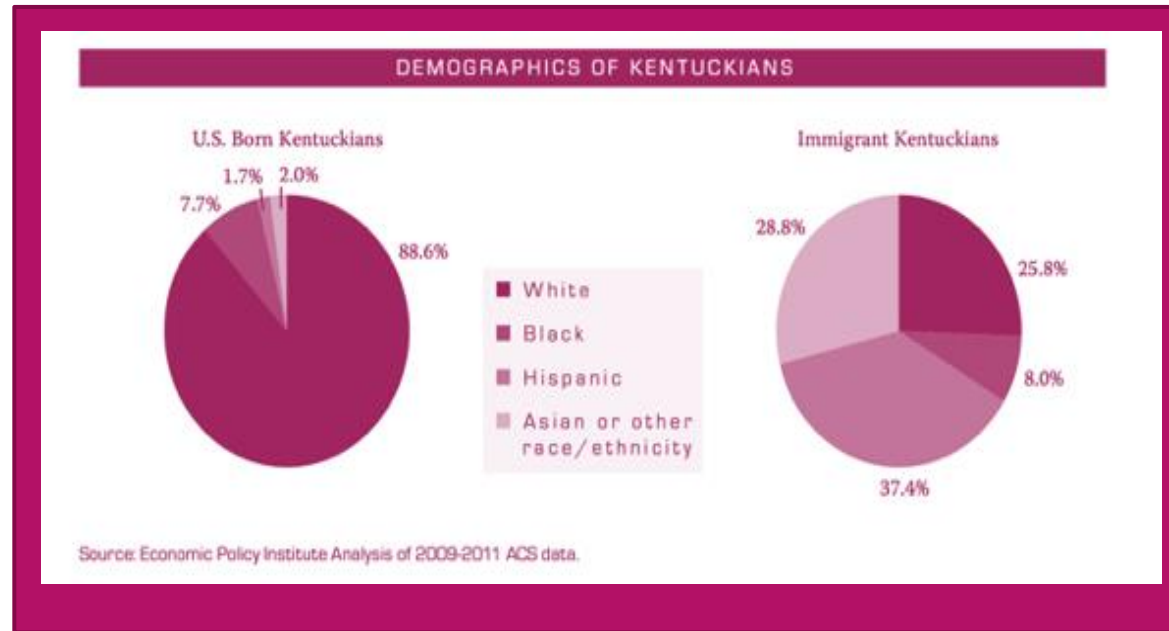
Introduction:

The Brandeis Human Rights Advocacy Program ("HRAP") is committed to actualizing human rights at the local level. It has followed a participatory action model in approaching its research. In an early needs-assessment conducted of immigrants and immigrant service-providers, anecdotal accounts revealed educational access concerns facing the immigrant/noncitizen/refugee community. HRAP set out to research educational access issues. Educational access is critical to the vitality of any thriving community. The law is clear that students are entitled to public education regardless of immigration status. Kentucky is home to an estimated 80,000 undocumented immigrants. One in three undocumented immigrant families are made up of both U.S. citizens by birthright and undocumented, noncitizen children. For the latter, gaining the necessary skills to become a part of the 1.2% of undocumented immigrants in Kentucky's workforce is an experience fraught with hardships and barriers. While the law is clear that all students have a constitutional right to a public education, actualizing that right in all public schools in Kentucky presents enrollment issues, language access issues, and a host of other challenges on the ground. These challenges can contribute to the 40% of undocumented adults between eighteen to twenty-four who do not complete high school.



Louisville, home to Kentucky's largest immigrant population and public school system, is growing, both in absolute terms, and as a percentage of the total. In an environment where the immigrant population is increasing each year, it is important that all children have proper access to public education in order to avoid devastating economic and social consequences. This Report will provide an overview of the statistical landscape, explain controlling state and federal education policy, highlight key issues facing undocumented noncitizen students, analyze survey results, and offer final conclusions. ¹

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Relevant Law: Governing Educational Access

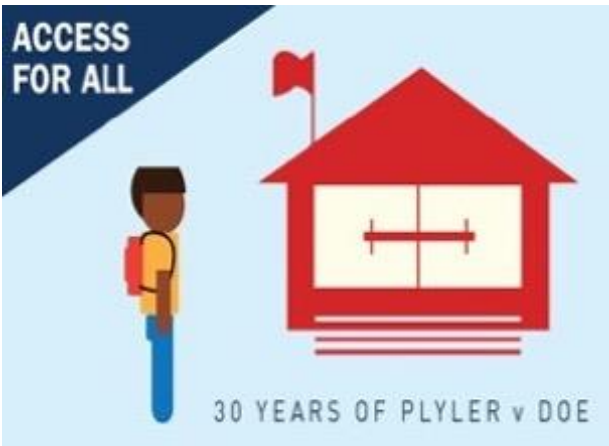
This section highlights the key legal rules governing educational access at the federal and state level.

- The Fourteenth Amendment to the U.S. Constitution guarantees equal protection under the law. The Supreme Court applied the Fourteenth Amendment's guarantee of equal protection to public education in *Brown v. Topeka Board of Education*. In 1982, the Court

held in *Plyler v. Doe* that public schools could not deny access to undocumented children regardless of immigration status.

- Title VI of the Civil Rights Act of 1964 bars discrimination based on race, color, or national origin in programs or activities receiving federal assistance. As public schools receive federal funds, Title VI proscribes student segregation on the basis of race or national origin as well as denial of

In 1982, the Court held in *Plyler v. Doe* that public schools *can not* deny access to children regardless of immigration status.



Since Plyler, Kentucky schools cannot require students to divulge social security numbers, inquire about immigration status, or ask any other question of students wishing to enroll that would produce a chilling effect on the child's right to education

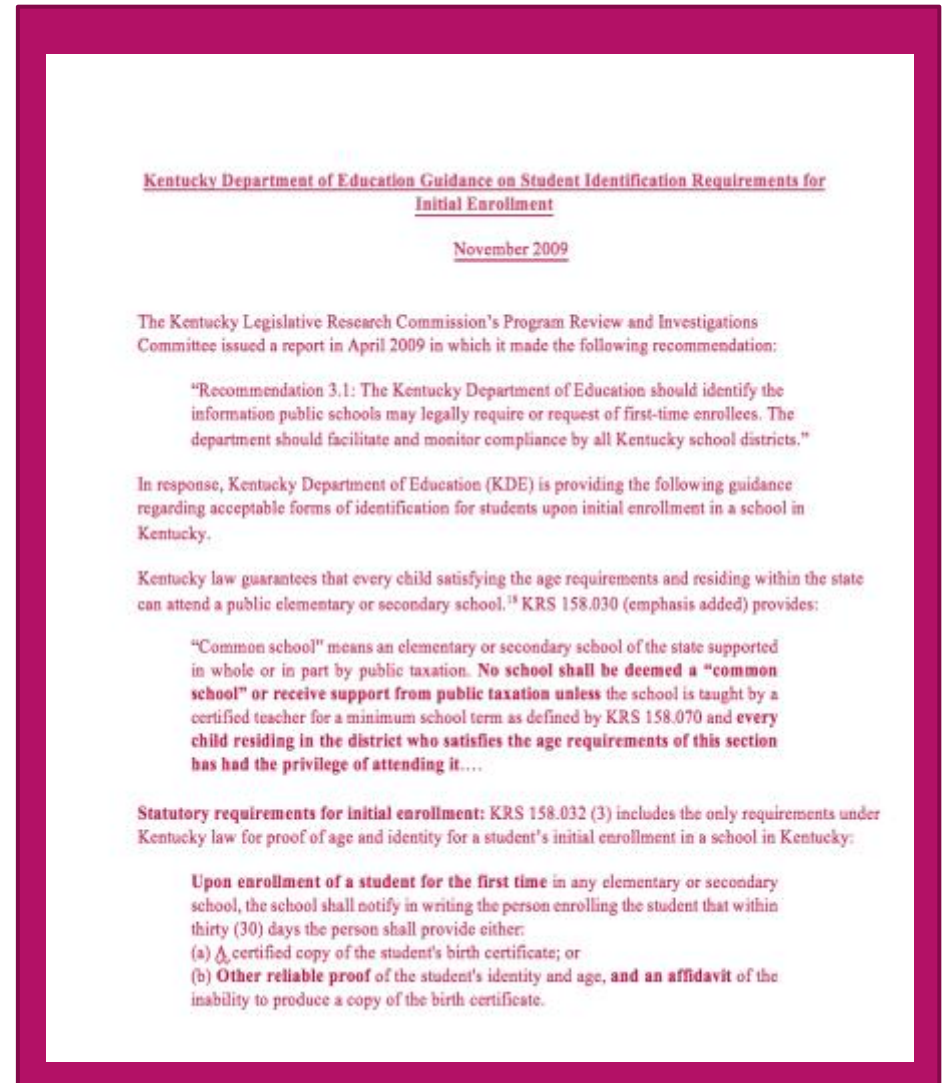
language services to students learning the English language. Section 1703(f) of the Equal Educational Opportunities Act of 1974 (EEOA) requires public school districts to overcome language barriers that impede students learning English from participating equally in public education.

- Under KRS 158.030, a public school in Kentucky must grant “every child residing in the district who satisfies the age requirements. . . the privilege of attending it.” Under KRS 158.032(3), a first-time enroller at a Kentucky school may be asked for proof of age and identity, and that proof can be provided through either a) a birth certificate, or b) “other reliable proof” together with an affidavit of the inability to produce a birth certificate. While the statute provides a list of acceptable “other reliable proof,” the list is non-exhaustive and the Kentucky Department of Education (KDE) grants school principals the discretion to “make an adjudication of whether the offered identification is reliable proof of identification.”³

- Since *Plyler*, Kentucky schools cannot require students to divulge social security numbers, inquire about immigration status, or ask any other question of students wishing to enroll that would produce a chilling effect on the child's right to education. KRS 156.160 created the Statewide Student

Identification System, which assigns an ID number to every student for use by the school system; the SSID serves as a universal alternative to social security numbers in Kentucky public schools.

- Under the EEOA, the burden is on school districts to provide notice to parents of students wishing to enroll of a) all the requirements for proof of the student's identity and age, b) what are acceptable forms of identification, and c) the reasons for any refusal to enroll a student. This notice should be written in language understandable to the general public and provided in the native language or other mode of communication of the parent to the extent possible with documentation of the attempt.
- The KDE makes school superintendents responsible for conveying this information to their local schools, and school principals are responsible for ensuring personnel entrusted with enrollment duties are properly instructed as to limits of the identification requirement.⁴ A public school can not engage in any practice that would inhibit or discourage an undocumented student from attending. The KDE mandates that schools that refuse to enroll a student based on the ID .



requirement “shall report the refusal to the KDE Office of Legal, Legislative and Communications Services. . . before the close of the following business day.”⁵

- While the holding in *Plyler* is unambiguous, enforcement of limitations on identification requirements has been spotty. Enforcement often follows a top-down approach, with the greatest compliance found at the federal and state agency level, while individual superintendents, principals, and enrollment personnel are successively more likely to violate legal limits.⁶ Thus, despite government attempts to enforce *Plyler* from the top down, most problems will likely be present only on the lower level of educational hierarchies.⁷
- For example, for seven years, the ACLU and other activists in New Jersey have measured compliance with federal and state law by surveying local school districts.⁸ In 2008, the ACLU of New Jersey, “conducted rigorous telephone surveys of the more than 500 school districts in the state and discovered that 139 of them required documents that indicate immigration status, contrary to New Jersey

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Legal Backgrounder on Equal Access to Education in New Jersey

The ACLU-NJ found in a survey of school districts in every New Jersey county that schools were breaking the law by requesting information for registration that would reveal the immigration status of children seeking to enroll. This list explains what schools can and cannot do under the law.

Children's rights under the law:

- Public schools may not exclude any student from enrollment based on immigration status, as decided in the U.S. Supreme Court decision, *Plyler v. Doe*, 457 US 202 (1982).
- New Jersey law prohibits keeping students from public elementary and secondary schools on the basis of immigration/visa status, except for F1 (student) visas. N.J.A.C. 6A:22-3.4(d) and N.J.A.C. 6A:22-3.3(f).
- Children between ages 5 and 20 in a school district are entitled to an education regardless of immigration status. N.J.S.A. 18A:38-1.

What public schools cannot ask regarding your child:

- Your child's immigration status
- Documents proving the type of immigration status your child may have, including a visa, passport or employment authorization card
- Any kind of document proving immigration status of the child's parent
- Income tax returns
- Social Security numbers
- A United States birth certificate
- Documentation or information relating to compliance with local housing ordinances or conditions of tenancy

What public schools can ask regarding your child:

- Birth certificates (a certified copy is acceptable). If not available at registration it must be provided to the school within 30 days.
- Immunization records
- Transfer card and transcripts
- A current report card if transferring from another state or district
- Proof of residency in the school district
- Proof of guardianship or natural parent

August 29, 2008

*regulations and the U.S. Constitution. [As of 2014, f]orty-six of these school districts still engage[d] in discriminatory ID policies, according to the ACLU-NJ's latest analysis."*⁹

- As a result of these findings, the ACLU-NJ drafted and released a one-page fact sheet detailing what schools can and cannot require for identification purposed. The organization has publicized their findings on a publicly-accessible website. The ACLU-NJ then filed suit against one non-compliant school, who settled one day later by altering their policy to comply with the law. The organization then drafted a form

Guiding Questions

1. Whether the identification requirement itself has an onerous chilling effect on education access by undocumented immigrant children insofar as it requires an affidavit of the inability to produce a birth certificate;
2. Whether school districts, superintendents and principals have sufficiently trained personnel responsible for enrollment on the limits of the identification requirement;
3. Whether school districts, superintendents and principals are complying with statutory limits on identification requirements of undocumented immigrant children;
4. Whether school districts, superintendents and principals have sent reports of refusal of admission to Kentucky public schools on the basis of insufficient identification KDE legal, as required by KDE regulations;
5. Whether the use of ‘New Comer Academies’ satisfies *Plyer*.
6. Whether or not Kentucky public schools should utilize ‘adult education’ to assist foreign-born students reach graduation status.

The Survey: General Over View

The Education Access project of The Brandeis Human Rights Advocacy Program aimed to find out what burdens foreign-born children face when they enroll in public schools in Kentucky. The project utilized an original survey administered by public service volunteers that consisted of five major questions (What kind of documentation is required to enroll child? What kinds of documents are acceptable to establish residency? What if a child does not have a us birth certificate? What other documents are acceptable? If someone does not speak english as their first language what do you typically do to help them?) each of which has its own set of potential responses for the surveyor to record based on the school's response.

The Education Access Survey used a computer survey to obtain information from 400 schools in the counties in Kentucky with the highest proportion of foreign born population about their enrollment process for foreign-born children. Because the Human Rights Advocacy Program sought to understand the non-immigrant experience during the public-school enrollment process from their perspective, surveyors were asked to

HRAP EDUCATIONAL ACCESS SURVEY

Directions: Please enter the address and contact information of the school below. Then call a school you have been assigned. Ask to speak with a person involved with enrollment. Identify yourself as a student at the University of Louisville conducting an educational access survey for a student project. Maintain courtesy and professionalism. Ask the questions below, without suggesting answers. Use your word processor to type the answers in the spaces below. Please fill one of these forms for each school you interview.

PART I: SCHOOL CONTACT INFORMATION

SCHOOL NAME:
SCHOOL ADDRESS:
COUNTY:
PHONE NUMBER:
JOB TITLE OF RESPONDENT:

PART II: SURVEY

1. What kind of documentation is required to enroll a child? (type "X" all that apply)
a) Birth certificate b) passport/visa c) baptism/church document
d) hospital record e) school record f) affidavit
Other proof (please describe): _____

2. What kind of documents are acceptable to establish residency in the district?
a) Birth certificate b) passport/visa c) baptism/church document
d) hospital record e) school record f) affidavit
Other proof (please describe): _____

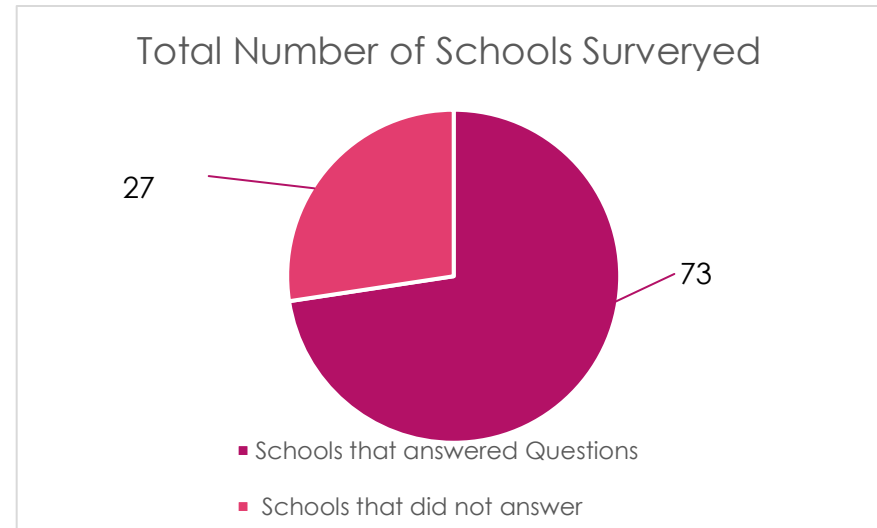
3. What other documents are acceptable?
a) Birth certificate b) passport/visa c) baptism/church document
d) hospital record e) school record f) affidavit
Other proof (please describe): _____

4. What happens if a child does not have a U.S. birth certificate?
a) Family provided with instructions on what other reliable proof is allowed
b) Child is admitted permanently or provisionally
c) Enrollment is denied
d) Family is notified that police will be called if proper ID not provided

administer the survey to the front desk staff or person in charge of admitting new students, because those persons are most likely whom parents speak to when they call the school directly. *Additionally, surveyors were asked to refrain from suggesting answers and were tasked with asking the questions in an open-ended manner to allow respondents to give free-form responses.*

The Survey: Findings

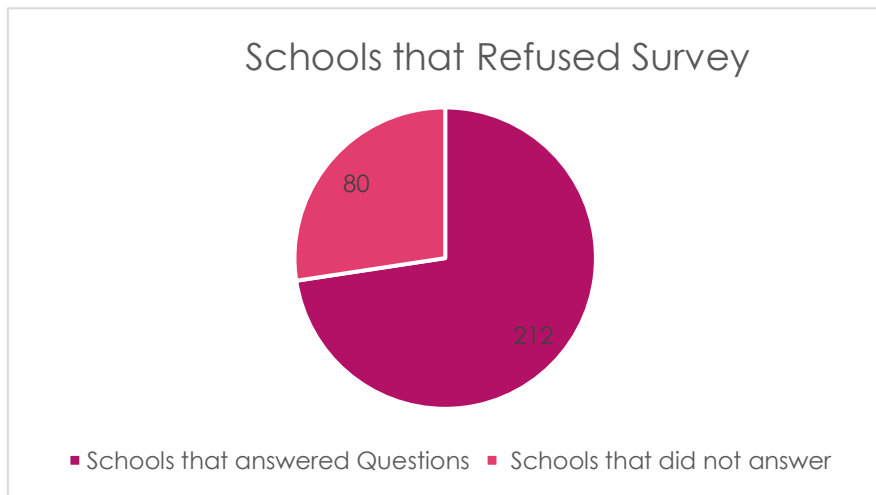
The survey revealed that the majority of Kentucky public schools do not comply with federal and state enrollment requirements and are generally unaware of the proper enrollment methods for foreign-born students. From 2015 to 2016, 292 of the 400 schools in the counties in Kentucky with the highest proportion of foreign-born population were surveyed. Of the 292 schools that have been surveyed, 80 refused to answer any questions, 28 of which were in Jefferson County. At three schools across the state, respondents informed us that a student without a US birth certificate would not be admitted. At four schools, an enrollee without a US birth certificate would be enrolled only after providing immigration paperwork. In at least five cases outside Jefferson County, we could not tell whether an enrollee without a US birth certificate would be enrolled: respondents told us the student would be given a form to request a birth certificate, but did not give further details.



- 31 schools outside of Jefferson County asked for social security cards at enrollment. More specifically, those schools asked students for a social security number “if you have it.” The paperwork – in English – asks for “social security

card or waiver," but these 31 respondents did not include that in their verbal answer. The most common response we received to our question about enrollment of undocumented children is that no one was turned away for lack of a birth certificate – ever. To be clear, most schools did not turn students away with malicious intent. The frustration and short answered reflected that school staff were acting on what they believed the law to be. This aspect of the survey results suggest that the current trend to turn away foreign-born students can be reversed if schools are provided with adequate information on the enrollment process.

- Because Kentucky regulations devolve enrollment process decision making to district authorities, enrollment requirements are a patchwork of differing rules--most notably, the processes in Both Jefferson and Fayette



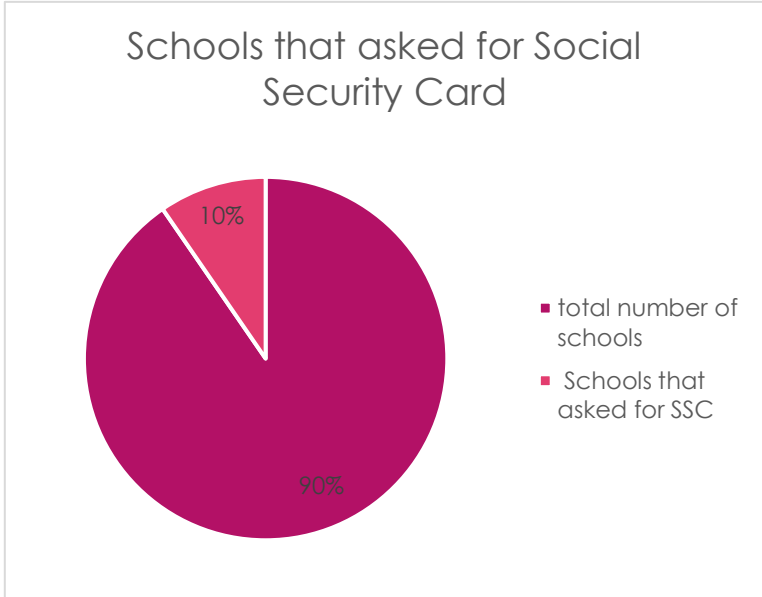
Counties, which are distinct for many reasons. The results of these two counties were at opposite ends of the spectrum, but highlight the complexities of population density and the public-school system's capacity to handle all the foreign-born students in their districts.

- Though Fayette County has the highest proportion of foreign born residents of any county in Kentucky, most of those residents are adults. Additionally, the majority of Fayette County's immigrant population are of African and European descent. So, Fayette County schools are less

impacted by the foreign-born population.

- Fayette County is not without fault, its work force sees the majority of its immigrant, non-citizen, and refugee issues. Whereas Jefferson county, which is has a higher population of foreign-born students, experiences issues within its school system, but has a host of programs to help adults find housing, jobs, and even program to address

immigration related employment issues.

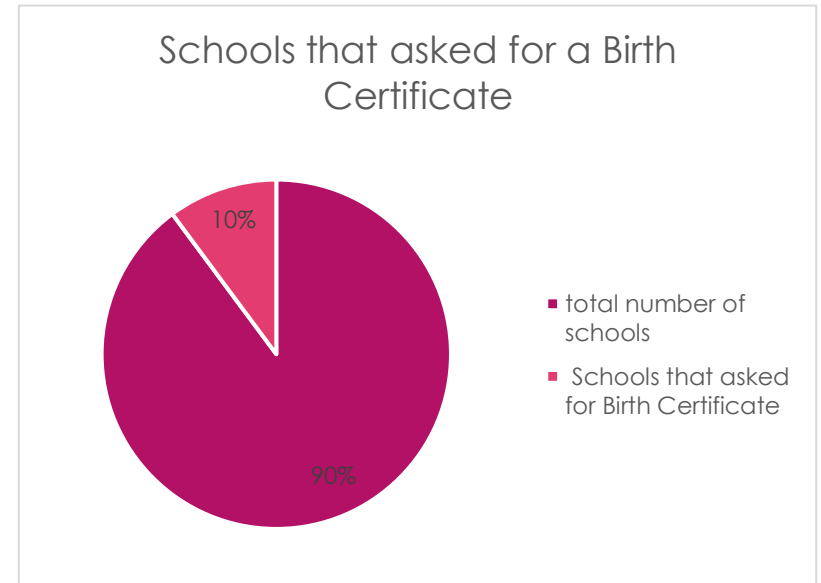


- In Fayette County, the answers to our enrollment documentation questions were very uniform. Most respondents frequently responded, “chapter and verse” with: “District policy requires three things: a birth certificate, proof of residency, and current immunization paperwork.” Additionally, Fayette county schools had translators on site and enrolment documents translated in Spanish. In a sense, they are the model county for proper enrolment procedures.

- In Jefferson County, district wide ESL services are responsible for covering gaps in the school system. However, not every school in the county has an ESL program. In those cases, non-native language speakers can be referred out of their home school to a school with an ESL program or to Newcomer

Academy, a school specializing in ESL education services. Jefferson County's system is unique in many ways, but most importantly here, in the way it separates immigrants into ESL schools.

- Jefferson County schools were the most likely to refer enrollees to offsite legal guidelines instead of providing them with enrollment material. Numerous respondents told us they did not know how to handle enrollment of an undocumented student. More specifically, several Jefferson County respondents we spoke to either told us a child without a US birth certificate would be referred out, or would be handled by the district.



- It was difficult to discern from responses whether student would be admitted without a birth certificate. The typical response: A student without a US birth certificate is "technically not supposed to be enrolled but it's at the discretion of the principal", reflects less awareness of immigrant population needs at certain schools. Finally, after calling around 50 schools in Jefferson county, volunteers began to receive cookie cutter responses from front desk staff at various schools as though they had been instructed to respond a certain way.

The Survey: Analysis of Findings

The survey revealed that most schools stand in high need of information about how to comply with federal and state laws about enrollment in the public-school system. The varied responses and trend towards turning foreign-born students away reveals that there is some confusion about how to handle the enrollment of foreign-born students. The foreign-born population of the US and the Commonwealth is growing, both in absolute terms, and in proportion to the native-born population. Our local schools have traditionally resisted integration. Denying this segment of our population a right to public education could have grave consequences in the near future.

Conclusion

The results of the survey and the current political climate suggest that if Kentucky public schools are not educated about the law, that foreign-born, refugee, and non-citizen students will be shut out of our education system. Restricting total access to the public education system will result in a large swatch of resident Kentuckians being illiterate and with minimal ability to function in day to day affairs. More specially, it will result in a large population of our young adult workforce having no skills to obtain a job, low levels of social and political efficacy, and a negative impact on our economy, both producers and consumers.

Denial of the right to education impacts more than ones ability to dawn the achievement of completing school. It chills access to many other Constitutional rights and civil liberties. if you are not able to obtain an education, there is little hope that one could find gainful employment, understand and participate in our political process, and or access necessities such as healthcare, financial resources, and other services needed to protect civil liberties and live a full life.

Chilling the right to education creates a multi-layered problem that must be solved at the outset because with the passage of time, little can be done to bring adult members of our society up to speed on the vital skills they need to lead full and meaningful lives. Our economy, political systems, and social environments depend on all persons having access to the educational institutions that prepare us to function in and contribute to our communities.

In the future, the Education Access project should create an informative video, presentation, or poster that Kentucky public schools can hang in their front offices to inform staff and inquiring parents about what the law says concerning enrollment. Providing our schools with the proper information, should resolve the issues mentioned through this memo and halt any future legal action such as the law suit that the New Jersey ACLU filed against the public school systems. Additionally, the Education Access project should analyze what other constitutional rights are simultaneously denied when the right to education is blocked By showing that more than one right is burdened when the right to education is blocked. The more rights that can be proved to be burdened, the stronger the case for Brown-like redress becomes.

Thank You

The Education Access project was made possible by the help of student volunteers who devoted their winter, spring, and summer breaks to compiling survey results and working in other capacities to help complete the survey phase of the education access project and bring awareness to the issues in this memo. The HRAP would like to thank all of those who helped. We could not have done it without your service.

¹ Andy Capps, et al. "A Profile of the Foreign Born in the Louisville Metropolitan Area," *The Urban Institute, Metro Louisville Office for International Affairs* (2006).

² Id.

³ Kentucky Department of Education Guidance on Student Identification Requirements for Initial Enrollment, November 2009.

⁴ Id.

⁵ Id.

⁶ See, e.g., Engesbak, Heidi, and Tor Arne Stubbe. 2008. Bureaucratic response to policy change: Implementation of adult education policy in Norway. *International Journal of Lifelong Education* 27 no. 1: 19–34.

⁷ Brenner, et al., Plyler Children: 21st Century Challenges with Judicial-Policy Implementation Affecting Immigrant Children in New Jersey, *20 Journal of Public Management and Social Policy* 1, August 2014.

⁸ “ACLU-NJ Warns Schools Statewide to Stop Discriminatory ID Policies.” April 1, 2014. <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>

⁹ Id.