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May 30, 2014

Hon. Frank Ciuffani, P.J.Ch.
Superior Court of New Jersey, Chancery Division
56 Paterson St.
New Brunswick, NJ 08903-0964

Re: *American Civil Liberties Union of NJ v. Old Bridge Township Public School District*
Civil Action No. _____

**Letter Brief in Support of Order to Show Cause
with Temporary Restraints**

Dear Honorable Judge Ciuffani,

Pursuant to *R. 2:6-2(b)*, please accept this letter-brief in lieu of a more formal brief in support of Plaintiff's Order to Show Cause which seeks to immediately enjoin Defendant from requiring parents to produce particular forms of photo identification in order to register their children for public school.

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PRELIMINARY STATEMENT

The children of undocumented parents have an unquestionable right to a free, public education that is guaranteed through the State and Federal Constitutions and implemented through New Jersey’s Administrative Code. However, New Jersey school districts have not always abided by their legal obligations and instead have created impermissible barriers to school registration for children of undocumented parents. When the American Civil Liberties Union of New Jersey surveyed many New Jersey school districts in 2008, it found that 139 school districts either required students or parents to produce Social Security numbers or to produce documents that indicate immigration status.¹

In the years since that study, the New Jersey Commissioner of Education has reminded school districts about their obligations to ensure access to education for the children of immigrants.² When districts have failed to heed these reminders, the ACLU

¹ Letter to Commissioner Davy, available at: <http://www.aclu-nj.org/files/4713/1540/4575/091508letterdavy.pdf>. (Exhibit A).

² October 25, 2010 *Letter from Rochelle Hendricks*, available at: http://www.aclu-nj.org/download_file/1365. (Exhibit B).

has been able to inform districts of the state of the law³ and resolve disputes without the need to resort to litigation.⁴ In one instance, despite the unambiguous state of the law, a school district insisted that it may exclude children – even citizen children – from access to a free, public education by imposing barriers to registration that prevent immigrant parents from completing the registration process.⁵ After the ACLU-NJ filed a lawsuit against the district, it relented and changed its policy to conform to the law.

In the wake of that case, Plaintiff again surveyed all New Jersey school districts; this time 136 districts violated clearly established law by requiring photo identification to register children for school.⁶ Plaintiff explained to the Old Bridge Township Public Schools – and 135 other school districts – that the policies described on their website violated the Constitution, the law, and New Jersey regulations. In the seven weeks since receiving the letter, Old Bridge has not changed its discriminatory policy. The ACLU-NJ has filed suit to make sure this injustice does not continue.

STATEMENT OF FACTS

The published policy of the Old Bridge Township Public Schools requires parents who want to register their children for public schools to produce a driver's license.

³ See American Civil Liberties Union of New Jersey, *Legal Backgrounder on Equal Access to Education in New Jersey*, August 29, 2008, available at: <http://www.aclu-nj.org/files/4113/1540/4574/090308facts.pdf>.

⁴ See, e.g., *American Civil Liberties Union of New Jersey Annual Report*, 2011, page 18-19, available at: <http://www.aclu-nj.org/files/8813/1661/2977/092111annrep.pdf>.

⁵ Peggy McGlone, *The Star Ledger*, “Facing lawsuit, Butler schools agree to stop discriminating against immigrant parents,” March 11, 2014, available at: http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html?utm_source=twitterfeed&utm_medium=twitter

⁶ ACLU-NJ [Press Release] “ACLU-NJ Warns Schools Statewide to Stop Discriminatory ID Policies” April 1, 2014, available at: <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>

Verified Complaint, ¶ 12. Undocumented immigrants are unable to obtain any of these forms of identification. *Id.* at ¶ 14-15. Without a change in policy, undocumented parents in Old Bridge Township are unable to register their children for school. *Id.* at ¶ 24, 29, 34.

ARGUMENT

To be entitled to interim relief pursuant to *Rule* 4:52-1, a party must show (a) that the restraint is necessary to prevent irreparable harm, *i.e.*, that the injury suffered cannot be adequately addressed by money damages, which may be inadequate because of the nature of the right affected; (b) that the party seeking the injunction has a likelihood of success on the merits; (c) that the relative hardship favors the party seeking the restraint; and (d) that the restraint does not alter the *status quo ante*. *Crowe v. DeGoia*, 90 N.J. 126, 132-136 (1982). Plaintiff easily satisfies these requirements.

I. PLAINTIFF IS LIKELY TO SUCCEED ON ITS CLAIMS, AS DEFENDANT'S REGISTRATION POLICY REQUIRING PARENTS TO PROVIDE SPECIFIC FORMS OF PHOTO IDENTIFICATION VIOLATES THE STATE AND FEDERAL CONSTITUTIONS AND THE ADMINISTRATIVE CODE

Federal constitutional law is neither new nor unsettled: the right to a free public education cannot be conditioned on the immigration status of children or their parents. *Plyler v. Doe*, 457 U.S. 202, 228 (1982). The New Jersey Department of Education, in recognition of this bedrock equal protection principle, has promulgated regulations addressing those documents which can be required to register a child for public school. *See N.J.A.C.* 6A:22-3.4(d). The Old Bridge Township Public School District's written policy, which effectively precludes undocumented immigrants from registering their

children for school, is directly counter to those regulations and violates principles of equal protection embedded in the Federal and State Constitutions.

In *Plyler*, the United States Supreme Court determined that a state can only “deny a discrete group of innocent children the free public education that it offers to other children residing within its borders,” 457 U.S. at 230, if the denial “furthers some substantial state interest.” *Id.* Such a standard is consistent with the Court’s recognition of the value of primary and secondary education. As the Court explained:

The “American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance.” *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). We have recognized “the public schools as a most vital civic institution for the preservation of a democratic system of government,” *Abington School District v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring), and as the primary vehicle for transmitting “the values on which our society rests.” *Ambach v. Norwick*, 441 U.S. 68, 76 (1979). “[A]s ... pointed out early in our history, ... some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972). And these historic “perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists.” *Ambach*, 441 U.S. at 77. In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.

[*Plyler*, 457 U.S. at 222.]

Plyler simply reinforced that which the Court had previously noted in *Brown v. Board of Education* about the importance of schooling: “education is perhaps the most

important function of state and local governments. . . . It is the very foundation of good citizenship. . . . [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* at 222-23, *quoting Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

In assessing whether the state could demonstrate its substantial interest in denying an education to immigrant children, the *Plyler* Court rejected the three proffered state interests. *Id.* at 228-230. First, a state cannot justify denial of education based upon a desire “to protect itself from an influx of illegal immigrants.” *Id.* at 228. Second, there is no evidence that the “exclusion of undocumented children is likely to improve the overall quality of education in the State.” *Id.* at 229. Finally, the Court rejected the suggestion that exclusion was justified by the fact that undocumented children’s “unlawful presence . . . within the United States renders them less likely than other children to remain within the boundaries of the State, and to put their education to productive social or political use within the State.” *Id.* at 229-230. As a result, the Court held that “consistent with the Equal Protection Clause of the Fourteenth Amendment, [a state] may [not] deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.” *Id.* at 205.

The State Department of Education is clear on what *Plyler* requires. In an October 25, 2010, memorandum to all chief school administrators and charter school leaders, Acting Commissioner Rochelle Hendricks confirmed the fundamental holding of *Plyler*: “that undocumented children living in the United States could not be excluded from public elementary and secondary schools based upon their immigration status.” *Letter from Rochelle Hendricks*, available at: http://www.aclu-nj.org/download_file/1365.

(Exhibit B). She explained: “Accordingly, school districts are prohibited from . . . making inquiries of students or parents that may expose their undocumented status or engaging in any practices that ‘chill’ or hinder the right of access to public schools.” *Id.* This requirement is codified in *N.J.A.C.* 6A:22-3.4, which prohibits conditioning enrollment on the production of documents “pertaining to criteria that are not a legitimate basis for determining eligibility to attend school. They include . . . Social Security numbers.” *N.J.A.C.* 6A:22-3.4(d)(4).

That is exactly what is being done by the Old Bridge Township Public Schools. While the School District is not directly requiring Social Security numbers, it is requiring a form of identification that requires those numbers and/or a valid immigration status. Because there is no way for a parent to obtain the required identification without a Social Security number or valid immigration status, the School District is explicitly conditioning a child’s enrollment on the parents’ immigration status.⁷ Such a result is prohibited by *Plyler*.

There is no dispute: *Plyler* is still good law. In 2012, on the 30th anniversary of the decision, then-Assistant Attorney General Thomas E. Perez remarked that “*Plyler* represents the best of our collective ideals as a nation.” Remarks of Assistant Attorney General Thomas E. Perez at the American Civil Liberties Union’s *Plyler v. Doe* 30th Anniversary Event,

⁷ It is worth noting that in *Plyler*, the students were themselves undocumented. 457 *U.S.* at 206. It is possible that the parents of American citizen children are being denied access to public schools because of the *parents’* immigration status.

Washington, D.C., June 11, 2012, available at:
<http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-120611.html>. (Exhibit C).

He further explained:

For the past three decades, *Plyler* has kept the door to opportunity open for millions of children across America. *Plyler* has stood for the proposition that public schools serve all children in this country, no matter where they were born. *Plyler* has represented the promise that the American dream should be accessible to all.

[*Id.*]

In recognition of the continued importance of *Plyler*, in 2011, the United States Department of Justice, Civil Rights Division and the United States Department of Education, Office for Civil Rights and Officer of the General Counsel issued guidance to local school districts reminding them of their obligations under *Plyler*. *Dear Colleague Letter*, May 6, 2011, available at:
<http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>. (Exhibit D). The guidance was explicit: “To comply with . . . the mandates of the Supreme Court, you must ensure that . . . students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians.” *Id.* at 1-2. To that end, “districts may not request information with the purpose *or result* of denying access to public schools on the basis of race, color, or national origin.” *Id.* at 2. While Old Bridge Township’s policy may not have a purpose of barring undocumented immigrants from school, it certainly has that result. As such, it violates *Plyler* and must be enjoined.

If there was any doubt about the propriety of a Driver’s License requirement in March 2014 when the ACLU-NJ sued the Butler School District, the United States

Department of Justice and United States Department of Education recently resolved any uncertainty. In a publication dated May 8, 2014, the Departments explained:

A district should review the list of documents that can be used to establish residency to ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

For example, while a district may choose to include a parent's state-issued identification or driver's license among the documents that can be used to establish residency, a school district may not require such documentation to establish residency or for other purposes where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.

[United States Department of Justice and United States Department of Education, "Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents:" available at: <http://www.justice.gov/crt/about/edu/documents/plylerqa.pdf> (emphasis original) (Exhibit E).]

The United States Supreme Court reached its conclusion in *Plyler* even taking into account that there is no right to public education found in the United States Constitution. *Plyler*, 457 U.S. at 221; *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). The New Jersey Constitution provides an affirmative right to public education. As such, while this court need not go beyond the clear and unambiguous precedent of *Plyler*, the State Constitution provides even greater reason to strike down the District's policies. See *State v. Cooke*, 163 N.J. 657, 666 (2000) (recognizing that the Court has interpreted our State Constitution as affording greater protections than those afforded by its federal counterpart). As the New Jersey Supreme Court has explained:

The New Jersey Constitution charges the State with the fundamental responsibility to educate schoolchildren: “The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” N.J. Const. art. VIII, § 4, ¶ 1. In *Abbott v. Burke*, 119 N.J. 287, 384–85 (1990) (*Abbott II*), this Court held that students in the poorest urban districts were deprived of their constitutional right to a thorough and efficient education due to the State’s failure to provide adequate financial resources for their educational programming.

[*Abbott ex rel. Abbott v. Burke*, 206 N.J. 332, 340 n.1 (2011).]

In this case, the court need not even reach the question of whether the education is “thorough and efficient”; because of the School District’s driver’s license policy, there is a likelihood of a total deprivation. Such a denial of access to a public school education violates the State Constitution.

Under both the State and Federal Constitutions, the law is clear: the children of immigrants cannot be denied access to schools as a result of their parents’ immigration status. Because that is exactly what is occurring in Old Bridge Township, Plaintiff is likely to succeed on the merits.

II. PLAINTIFF EASILY MEETS THE REMAINING STANDARDS FOR GRANTING TEMPORARY RESTRAINTS

A. Restraints are necessary to prevent irreparable harm

As explained above, the District’s policy prevents those without Social Security numbers or valid immigration status from registering their children from school. There is simply no way that an undocumented person (who lacks a Social Security number and

valid immigration status), can obtain the form of identification that Old Bridge Township School District is demanding.

This injury is irreparable. Undocumented immigrant parents currently cannot register their children for school. There is no doubt that a delayed start to school has serious long-term implications. As President Obama has explained: “Study after study shows that the earlier a child begins learning, the better he or she does down the road.” Barack Obama, *Remarks by the President on Early Childhood Education -- Decatur, GA*, February 14, 2013, available at: <http://www.whitehouse.gov/photos-and-video/video/2013/02/14/president-obama-early-childhood-education#transcript>. If these children are kept out of school they will be forever denied the benefits associated with early education.

B. The relative hardship favors entering immediate injunctive relief

The Court should grant immediate temporary restraints because, as described above, parents who lack state- or county-issued identification⁸ will suffer a hardship, even if they are ultimately allowed to register their children for school at some point in the future. Registration for the Old Bridge Township Public School District is ongoing.

If the case is adjudicated in the normal course, without immediate injunctive relief, there is no assurance that it will be complete – and certainly not that appeals will

⁸ While undocumented immigrants are among those who lack these forms of identification, they are not alone. As we have seen in the context of voter identification laws, many populations (including the elderly, transgender people, students and the poor) have trouble obtaining these forms of identification. See, e.g., Lawyers Committee for Civil Rights Under Law, *Think Getting “Free” ID Is Easy? Think Again!*, available at: <http://www.lawyerscommittee.org/page?id=0046> (documenting instances where people were kept from the polls because of insufficient identification).

be complete – before the start of the 2014-2015 school year. In addition to the immediate threat facing parents without the required identification, it is impossible to overstate the harm suffered children denied access to an education to which they are entitled. The children will fall behind their peers in ways from which they may never be able to recover. The data that supports the conclusion that children do better the earlier they are exposed to school are overwhelming. Children who participated in New Jersey’s Abbott Preschool program had improved achievement in language arts, literacy, math and science, compared to children not in the Abbott program. Barnett, W. Steven, Kwanghee Jung, Min-Jong Youn, Ellen C. Frede. *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up*. National Institute for Early Education Research, 2013 available at: <http://nieer.org/sites/nieer/files/APPLES%205th%20Grade.pdf>. The benefits transcend education: In one study, children who had received comprehensive educational support services between the ages of three and nine were less likely to have been arrested, have problems with substance abuse, and be on food stamps. Reynolds, Arthur J., Judy A. Temple, Barry A.B. White, Suh-Ruu Ou, and Dylan L. Robertson. *Age 26 Cost-Benefit Analysis of the Child-Parent Center Early Education Program*. *Child Development*, 2011. Available at: <http://ts-si.org/files/doi101111j14678624201001563x.pdf>. Another study showed that children who attended a high-quality preschool as three- and four-year-olds were more likely to graduate from high school, earn higher wages and hold a job, and less likely to have committed a crime as adults. Schweinhart, Lawrence J., Jeanne Montie, Zongping Xiang, W. Steven Barnett, Clive R. Belfield, and Milagros Nores, *The High/Scope Perry Preschool Study Through Age 40: Summary, Conclusions, and*

Frequently Asked Questions, High Scope Press, 2005. Available at:
http://www.highscope.org/file/Research/PerryProject/specialsummary_rev2011_02_2.pdf.

Moreover, even if adjudication before the start of the next school year could be guaranteed, the delay itself imposes a significant burden on parents who wish to prepare their children for school. Some parents may reasonably choose to forego the months of indecision and instead relocate in order to register their children in a school district that complies with basic constitutional, statutory and regulatory provisions. These burdens favor immediate injunctive relief.

Further, even if parents are willing to endure the indecision, concern and confusion associated with awaiting adjudication in the ordinary course, if a preliminary injunction is not granted, when the District eventually eliminates the discriminatory policy and permits the children to be registered, the parents availing themselves of the registration process at a later date will be easily identifiable as those who were unable to produce the identification required under the current policy. Not only could they be subject to blackmail or threats of deportation, but they could be thrust in to a local debate regarding national immigration policy. Access to educational benefits for children of undocumented immigrants is a public issue of significant importance, and has received media coverage in other states. *See, e.g.*, Brad Cooper, “Kansas House repeals in-state tuition for children of illegal immigrants,” *Kansas City Star*, Feb. 22, 2011, available at: <http://www.mcclatchydc.com/2011/02/22/109174/kansas-house-repeals-in-state.html>.

Brian Lyman, “Immigration Law Makes School Officials Uneasy,” *Montgomery Advertiser*, Jun. 8, 2011, available at:
<http://www.montgomeryadvertiser.com/article/20110608/NEWS02/106080307>. The

possibility that these parents, many of whom have children who are United States citizens, may become enmeshed in the larger controversy involving immigration policy and the backlash against children of immigrants is a realistic one.

On the other side of the balance, there will be no hardship to the Defendant to force it to simply *abide by existing law*. Plaintiff does not question Defendant's right to require proof of residency. *N.J.A.C. 6A:22-3.4(a)*; *Martinez v. Bynum*, 461 U.S. 321, 328 (1983). There are several categories of documents that are explicitly permitted to be considered for that purpose. *N.J.A.C. 6A:22-3.4(a)*. There is also no doubt that the law forbids denial of "enrollment based on a failure to provide a particular form or subset of documents without regard to other evidence presented." *N.J.A.C. 6A:22-3.4(c)*. That is all that Plaintiff seeks to enjoin: Defendant's policy requiring one of three specific forms of identification, all of which require a Social Security number and/or valid immigration status.

Clearly, the balance of hardships supports immediate injunctive relief.

C. The restraint does not alter the *status quo ante*

As noted, the *status quo* is that which is permitted by the United States Constitution, the State Constitution, and New Jersey regulations. The Defendant's policy alters the *status quo*, and does so unlawfully.

D. The public interest requires entering injunctive relief

It is frequently said that in determining whether to order immediate injunctive relief, the public interest must be considered. Indeed, "courts, in the exercise of their equitable powers, 'may, and frequently do, go much farther both to give and withhold

relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” *Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Auth.*, 399 N.J. Super. 508, 520-21 (App. Div. 2008) quoting *Yakus v. United States*, 321 U.S. 414, 441 (1944).

Here the public interest requires injunctive relief. Individual students and their families have private interests in obtaining the education to which they are entitled. But, there is a societal value in ensuring access to education for all. As the Court explained in *Plyler*:

In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority.

[*Plyler*, 457 U.S. at 221-22.]

All of the factors therefore favor the granting of temporary restraints.

III. PLAINTIFF HAS STANDING TO BRING THIS CHALLENGE BECAUSE IT IS IMPACTED AS AN ORGANIZATION

“New Jersey courts take a broad and liberal approach to standing.” *NJ Citizen Action v. Riviera Motel Corporation*, 296 N.J. Super. 402, 415 (App. Div. 1997). As a result, “where the plaintiff is not simply an interloper and the proceeding serves the public interest, standing will be found.” *In re Quinlan*, 70 N.J. 10, 35 (1976). An organization such as the ACLU-NJ can obtain standing where “it has a real stake in the outcome of the litigation, there is a real adverseness in the proceeding, and the complaint

‘is confined strictly to matters of common interest and does not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual [member] and the [defendant].’” *NJ Citizen Action*, 296 N.J. Super. at 416 (quoting *Crescent Pk. Tenants Ass'n v. Realty Equities Corp.*, 58 N.J. 98, 109 (1971)).

In the pleadings before the court, the ACLU-NJ demonstrates that it meets New Jersey’s broad approach to organizational standing: the organization itself is impacted in a real sense. First, it is clear that the ACLU-NJ has a stake in the outcome of this litigation and has a long history of advocating on behalf of immigrant communities. *See, e.g., State v. Gaitan*, 209 N.J. 339 (2012) (addressing retroactive application of *Nunez-Valdéz*, *infra*); *State v. Nuñez-Valdéz*, 200 N.J. 129 (2009) (addressing impact of bad legal advice regarding immigration consequences on the validity of a guilty plea); *ACLU-NJ v. Hudson County, et al.*, 352 N.J. Super. 44 (App. Div.), *certif. denied* 174 N.J. 190 (2002) (seeking information on immigration detainees held in county jails so as to meet with detainees and offer legal assistance); *Riverside Coalition of Business Owners, et al. v. Township of Riverside*, Dkt. No. BURL-L-2965-06 (Law. Div. 2007) (challenge to local ordinance creating penalties for renting to or hiring undocumented immigrants).

The ACLU-NJ has also been specifically involved in efforts to ensure access to education for the children of immigrants. *See, e.g.,* ACLU-NJ [Press Release] “ACLU-NJ Warns Schools Statewide to Stop Discriminatory ID Policies” April 1, 2014, available at: <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic> (describing letters sent to 136 school districts demanding changes to discriminatory registration policies); Peggy McGlone, *The Star Ledger*, “Facing lawsuit, Butler schools agree to stop discriminating against immigrant parents,” March

11, 2014, available at: http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html? (explaining ACLU's lawsuit against Butler's discriminatory identification policy); *A.Z. v. Higher Education Assistance Authority*, 427 N.J. Super. 389, 398 (App. Div. 2012) (challenge to denial of state financial aid to citizen students of undocumented parents); "1 in 5 NJ Schools Puts Up Barriers for Immigrant Children" available at <http://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children> (describing ACLU-NJ advocacy efforts to end discriminatory registration policies for children of undocumented immigrants); Parastou Hassouri, *The Star Ledger* "Don't Deny Immigrant Kids An Education" September 8, 2004, available at: <https://www.aclu-nj.org/theissues/immigrantrights/dontdenyimmigrantkidsanedu/> (op-ed written by ACLU-NJ Immigrant Rights Specialist criticizing schools' Social Security number requirements).

As described in great detail in Paragraph 6 of the Verified Complaint, the ACLU-NJ has expended significant resources to advance its mission of protecting the rights of all New Jersey children to obtain primary, secondary and higher education free from impermissible barriers such as is at issue here. The process of documenting schools' discriminatory registration policies – which the ACLU has done three times on a statewide basis⁹ – is extremely time consuming and, therefore, costly. The follow-up

⁹ The ACLU-NJ conducted surveys in 2006 (<https://www.aclu-nj.org/news/2006/08/29/survey-immigrants-risk-exclusion-in-1-of-4-nj-schools>), 2008 (<https://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children>) and 2014 (<https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>).

from these surveys also requires the expenditure of significant resources.¹⁰ At times, the ACLU-NJ has even dedicated litigation resources to ensuring access to education for all New Jerseyans.¹¹ The investment of significant resources over a long period of time is strong evidence of the ACLU-NJ's organizational interest.

In short, the ACLU-NJ has a concrete, demonstrated and long-standing organizational interest in challenging Old Bridge Township's school registration identification policy.

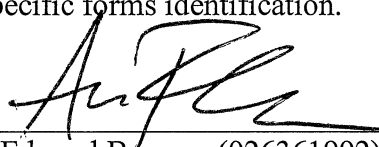
¹⁰ In 2006, the ACLU-NJ followed up with a letter to the Department of Education (<https://www.aclu-nj.org/files/6713/1540/4574/082906LtrDOE.pdf>); in 2008, the ACLU-NJ sent letters to both the Department of Education and the 187 offending school districts (<https://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children>); this year, the ACLU-NJ sent letters to 136 school districts and has been in contact with the State Department of Education and the United States Department of Justice.

¹¹ *A.Z.*, 427 *N.J. Super.* at 398; <https://www.aclu-nj.org/files/8813/1661/2977/092111annrep.pdf> (pages 18-19) (describing advocacy done on behalf of a parent whose children were unlawfully excluded from school); http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html

CONCLUSION

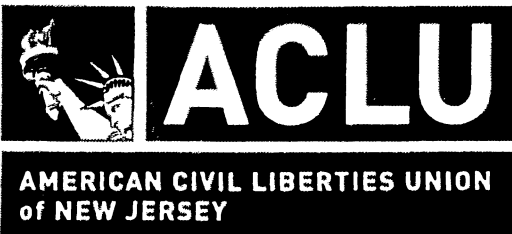
For the reasons set forth above, Plaintiff requests that its Order to Show Cause be granted, including immediate restraints against further implementation of the Old Bridge Township Public School District's requirement of specific forms identification.

Dated: May 30, 2014



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EXHIBIT A



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Development Director

August 29, 2008

The Honorable Lucille E. Davy
New Jersey Department of Education, Office of the Commissioner
100 River View Plaza, P.O. Box 500
Trenton, NJ 08625

Dear Commissioner Davy:

The American Civil Liberties Union of New Jersey is writing to urge you to take immediate action to rectify a continuing problem relating to school districts' improper request of Social Security Numbers (SSN) or other private information that would reveal the immigration status of children seeking to enroll in public schools in New Jersey. This practice has a chilling effect on immigrant students seeking to register for school and violates state and federal law.

Although all children in New Jersey have a right to public education, the ACLU-NJ has learned that at least 139 school districts in New Jersey require families to either produce SSNs for the children enrolling or produce other documents that would indicate immigration status. For many children of undocumented immigrants in New Jersey, if a school district so much as inquires about SSN or citizenship, the parents will turn away from trying to register their children due to fear of deportation or other consequences.

As you well know, the law on this matter is clear:

New Jersey's state law (N.J.S.A. 18A:38-1) clearly states that domicile and age are the only factors to determine eligibility for a free public education. All children between the ages of five and 20 are eligible to attend public school, regardless of their immigration status.

Further, the New Jersey Administrative Code (N.J.A.C. 6A:22-3.4(d)) specifically states, "A district board of education shall not require or request, as a condition of enrollment in school, any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school." The Code explicitly states that schools are barred from and may not directly or indirectly, require or request:

1. Income tax returns;
2. Documentation or information relating to citizenship or immigration/visa status, ...
3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and
4. Social security numbers.

Additionally, Section 7 of the federal Privacy Act of 1974 requires state and local government agencies requesting an individual's SSN to make the following disclosures: (i) the authority by which the SSN is solicited; (ii) whether disclosure by the individual is mandatory or voluntary; and (iii) the uses to which such information shall be put.

Finally, the Supreme Court in *Plyler v. Doe*, 457 U.S. 202 (1982), held that undocumented children living in the United States could not be precluded from public elementary and secondary schools based on immigration status.

In July 2008, the ACLU-NJ began a survey project to assess the legality of enrollment requirements in school districts through-out the state. The ACLU-NJ project team, made up of volunteers and staff members, called 635 school districts in all counties of New Jersey, and made contact with 516. The team found that 139 school districts – over one in four – illegally required SSNs or other information that would reveal the immigration status of students seeking to enroll. In addition, another 48 school districts suggested that such information would aid in the registration process. Thus, a total of 187 school districts – more than one in three – acted in violation of the law.

Today, the ACLU-NJ sent letters to the 187 non-compliant school districts requesting that the demands for SSN numbers or information about immigration status be removed from enrollment forms and that administrative staff who may handle such inquiries be trained about the law.

In 2006, a similar, though less exhaustive survey was done where 57 of 224 school districts surveyed requested information that would reveal the immigration status of children or their parents seeking to enroll them. This year 55 of the 57 non-compliant schools identified in 2006 were contacted. Twenty-one of those schools, an astounding 38%, are still asking for information protected from disclosure. This is so despite the fact that, after our initial 2006 study, two-thirds of the schools indicated that they would amend their forms or retrain staff.

Based on the pervasiveness of this problem, the ACLU-NJ urges your office to take immediate steps to end these practices.

Specifically, the ACLU-NJ requests that the state Department of Education:

- Issue a formal, written directive to all school superintendents in New Jersey reminding them of the law;
- Monitor compliance;
- Require school districts to train frontline school personnel who handle such inquiries from parents of prospective students; and
- Require school districts to revise all registration forms, including information posted on web sites, so they comply with the law.

Given that the Department of Education has sent memos to school districts on several occasions on this very issue, we wish to emphasize that monitoring compliance is essential if this practice, which puts immigrant students at risk of exclusion from public school, is to end.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Barocas', written over the printed name.

Ed Barocas

Legal Director

American Civil Liberties Union of New Jersey

EXHIBIT B



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ROCHELLE R. HENDRICKS
Acting Commissioner

October 25, 2010

TO: Chief School Administrators
Charter School Leaders

FROM: Rochelle Hendricks
Acting Commissioner

SUBJECT: Enrollment of Immigrant Students and/or Undocumented Students

This memorandum is to ensure that school district personnel are aware of federal and state laws that prohibit denying the enrollment of students in the public schools on the basis of immigration status. In *Plyer v. Doe*, 457 US 202 (1982), the United States Supreme Court held that undocumented children living in the United States could not be excluded from public elementary and secondary schools based upon their immigration status. Accordingly, school districts are prohibited from requiring students to disclose or document their immigration status, making inquiries of students or parents that may expose their undocumented status or engaging in any practices that "chill" or hinder the right of access to public schools.

New Jersey Administrative Code (N.J.A.C. 6A:22-3.3) also prohibits the barring of any student from public elementary and secondary schools on the basis of immigration/visa status, except for students on F-1 visas. Districts should continue to enroll all students who are between the ages of 5 and 20 who are domiciled in the district or who are otherwise entitled to attend pursuant to N.J.S.A. 18A:38.1, and the implementing regulations, N.J.A.C. 6A22-3.2, et. seq.

Please distribute this advisory to principals and others involved in the registration process. For further information, contact your county superintendent of schools or the Office of Student Achievement and Accountability in the Division of Student Services at (609) 292-8777.

RRH/BG/SO/rq:EnrollmentofImmigrantStudents

c: Members, State Board of Education
Andrew Smarick
Barbara Gantwerk
Suzanne Ochse
Raquel Sinai
LEE Group
Garden State Coalition of Schools
Executive County Superintendents

EXHIBIT C



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JUSTICE NEWS

Assistant Attorney General Thomas E. Perez Speaks at the American Civil Liberties Union's Plyler v. Doe 30th Anniversary Event

Washington, D.C. ~ Monday, June 11, 2012

It's an honor and a pleasure to be here with all of you today to mark the 30th anniversary of *Plyler v. Doe*, the U.S. Supreme Court's historic decision making clear that all children, regardless of their immigration status, must be made welcome in our nation's schools. I want to thank the ACLU for organizing this symposium, and Laura Murphy for the gracious welcome.

At the Civil Rights Division, we work to break down the barriers that keep so many from fully participating in American life - in the voting booth, the workplace, and of course, in the classroom. For the past three decades, *Plyler* has kept the door to opportunity open for millions of children across America. *Plyler* has stood for the proposition that public schools serve all children in this country, no matter where they were born. *Plyler* has represented the promise that the American dream should be accessible to all.

Plyler reflects the deeply American notion that all young people deserve the chance to advance as far as their hard work and talent can carry them. Every day, we hear about and work with students who, thanks to *Plyler*, are able to complete elementary and high school; who, without the benefit of financial aid, find a way to get a college degree, and who push on to fulfill a dream of becoming an architect, teacher or even a lawyer. These students are daily beneficiaries of *Plyler*, and their achievements are an inspiring example of why its holding is so critical.

Just over one year ago, together with our partners at the Department of Education, we issued guidance on the right of all students to enroll in school regardless of their or their parents' immigration status. The guidance reminded schools of their obligations under *Plyler* and federal civil rights laws more generally and made clear that:

- A child who resides in a state cannot be denied access to its public schools, whether or not the child is legally in the United States.
- Schools cannot have policies that bar or discourage students from attending school based on immigration status.
- Schools cannot have enrollment requirements that have the purpose or result of denying children access based on race or national origin.
- Schools cannot deny enrollment if students or their parents choose not to provide a social security number or, if a district requests a birth certificate, provide a foreign birth certificate.

We issued the *Plyler* guidance to help schools meet these obligations – because it's the law, and because there's so much at stake. No one benefits when a child is kept out of the classroom. The cost to that child, and to all of us, is just too great.

Three decades ago, the *Plyler* court noted the folly of depriving innocent children of the basic tools to contribute to society:

"By denying these children a basic education," the court said, "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."

Thirty years later, countless children have benefited from the *Plyler* decision, receiving an education and with it, a chance at a better life. Indeed, throughout this country, we see the promise of *Plyler* borne out. We see young people graduating from high school and reaping many of the benefits that come with a high school diploma. We see students pursuing their dreams of college and beyond, despite sometimes daunting obstacles. Because of *Plyler*, these young people are getting the opportunity to advance based on their individual merit – the essence of the American dream.

The benefits of *Plyler* are felt by all of us, wherever we or our ancestors were born. Three decades after *Plyler*, immigrant students have made and continue to make vast and deep contributions to

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Identify Our Most Wanted Fugitives

Find a Form

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America's cultural, civic, and economic landscape. Studies show that over time, the economic contributions of children of immigrants – who enter the labor force and pay far more in taxes than they receive in benefits – are on par with those of their classmates. In the schools, these children and their classmates reap the documented benefits of a diverse school environment. All over the country, we see immigrant children and their families contributing richly to their schools and the cultural, social, and economic fabric of this country. Thirty years after *Plyler*, the wisdom and moral strength of its holding are clearer than ever.

Undocumented children and children from immigrant families, however, continue to face barriers to enrolling in, and attending, school. For example, in 2011, Alabama passed a law known as H.B. 56, and in doing so, placed a road block at the school house door. H.B. 56 is Alabama's immigration law – a law that, among other things, directly targets students by requiring schools to verify the immigration status of enrolling children and their parents.

Right after H.B. 56 went into effect, the Civil Rights Division had boots on the ground. I attended a town hall meeting at an Alabama elementary school. There, I listened to parents, students and teachers share the deep and immediate impact H.B. 56 had on their lives. In Birmingham, which occupies a central place in the history of the civil rights movement, I heard from a diverse group of civil rights, faith and education leaders who were unified in condemning the effect of H.B. 56 on Alabama's schoolchildren.

We sought data on enrollment and attendance from the Alabama State Department of Education to get a more systemic sense of the impact of H.B. 56. Just last month, we shared our review with the state. While H.B. 56 was only in effect for a short time before being enjoined by the courts, the data revealed that the law had a major and lasting impact on Alabama's schoolchildren, particularly Hispanic students and English Language Learners. Absences among Alabama's Hispanic students tripled after the immigration law went into effect, while staying flat for other groups of students. Withdrawals of Hispanic children also spiked when compared with previous years, with more than 13 percent of the state's Hispanic students withdrawing between the beginning of the school year and February 2012.

Our conversations with students and parents underscored the dramatic picture painted by the state's data. Students told us they stayed home or withdrew from school out of fear that they or their parents would be questioned about their immigration status. Others returned to school but told us they couldn't concentrate in class and that they no longer felt safe and welcome in their classrooms. Parents told us about watching their honors students' grades drop in the aftermath of H.B. 56.

We also met with Alabama teachers and administrators -- educators who know just how much every school day counts in the life of a student. They are deeply committed to keeping students engaged, to getting parents involved, and to promoting inclusive environments at school. They felt that H.B. 56 has frustrated their efforts. And they told us about the tremendous time spent and the emotional toll of comforting children whose schoolmates have disappeared from the classrooms.

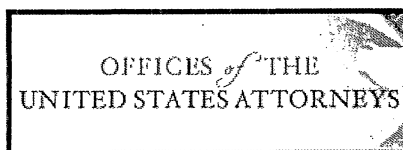
We will continue to closely watch and respond to the developments in Alabama as well as in any other states where students' access to education is curtailed. Alabama presents a dramatic challenge to the goals and values of *Plyler*, but across the country we see the persistence of barriers that limit educational opportunities. At the Civil Rights Division, these are challenges that we are working to address.

In the year since we issued the *Plyler* guidance, we have provided technical assistance to schools about their responsibility to enroll students regardless of their immigration status. We have investigated complaints about schools that have requested social security numbers from students and/or parents, thereby discouraging - if not directly prohibiting - many undocumented students from coming to school. We have also investigated complaints that schools have not made their registration procedures accessible to parents who have limited proficiency in English. These are the day-to-day barriers that immigrant students face as they try to receive an education and start down the path of a better future.

Our efforts to remove these barriers continue in districts throughout this country. For example, in states like North Carolina and Kentucky, we have worked with schools to revise enrollment policies and remove requirements that students produce social security numbers. In the Palm Beach County, Fla. School District, we have worked to ensure that the district's requirements for proving residency do not create barriers for immigrant students, and that policies and forms are translated for parents who are not proficient in English. These districts are taking proactive steps to make sure that students and their families are welcomed in school, regardless of background.

To fully realize the goals and the promise of *Plyler*, we must do even more as a nation. We must come together in honor of the young men and women who were not yet citizens of the U.S. yet risked – and lost – their lives in the Iraq war. They fought and died for their country before they were allowed to call it their own.

For those young people who hope to continue on to college, or to bravely serve our nation in the armed forces, we must continue to break down barriers. The President has spoken about the simple justice and common sense of the DREAM Act. The DREAM Act would provide a path to citizenship for immigrant students who aspire to higher education, or who serve with valor in the U.S. military. These talented young people truly represent the best of what America has to offer. More than anything, they want to pursue their dreams and contribute to this country, a country that they know and love as their



own. Passing the DREAM Act, and passing comprehensive immigration reform to fix our broken immigration system, will bring us closer to the ultimate value that underlies the *Plyler* decision -- that every child should have the chance to succeed to the very limits of his or her talent and ambition.

Plyler represents the best of our collective ideals as a nation. Those ideals of equality, justice, and fairness are central to the mission of the Civil Rights Division. Although countless children – and our country as a whole – have directly benefited from *Plyler’s* holding, the past year has shown us that we still have far to travel. At the Civil Rights Division, we will continue to use all tools at our disposal to fulfill the promise of *Plyler*, and to keep the schoolhouse door open to all.

U.S. DEPARTMENT OF JUSTICE

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EXHIBIT D



U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
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May 8, 2014

Dear Colleague:

Under Federal law, State and local educational agencies (hereinafter “districts”) are required to provide all children with equal access to public education at the elementary and secondary level. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law. We are writing to update the previous Dear Colleague Letter on this subject that was issued on May 6, 2011, and to respond to inquiries the Departments received about the May 6 Letter. This letter replaces the May 6 Letter.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. See 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

Additionally, the United States Supreme Court held in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), that a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise. Denying “innocent children” access to a public education, the Court explained, “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. . . . 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. As *Plyler* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student’s entitlement to an elementary and secondary public education.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians. Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).¹ For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students’ citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district. A district should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

As with residency requirements, rules vary among States and districts as to what documents students may use to show they fall within State- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.

¹ Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child’s parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(1).

Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. See 5 U.S.C. §552a (note).² If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish to review the documents your district requires for school enrollment to ensure that the requested documents do not have a chilling effect on a student's enrollment in school. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

We are also attaching frequently asked questions and answers and a fact sheet that should be helpful to you. Please contact us if you have additional questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov or the Department of Education Office of the General Counsel at (202) 401-6000. You may also visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the OCR enforcement office that serves

² Federal law provides for certain limited exceptions to this requirement. See Pub. L. No. 93-579, § 7(a)(2).

your area. For general information about equal access to public education, please visit our websites at <http://www.justice.gov/crt/edo> and <http://www2.ed.gov/ocr/index.html>.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Philip H. Rosenfelt
Deputy General Counsel
Delegated the Authority to
Perform the Functions and
Duties of the General Counsel
U.S. Department of Education

/s/

Jocelyn Samuels
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Attachments

EXHIBIT E



U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel



**Information on the Rights of All Children to Enroll in School:
Questions and Answers for States, School Districts and Parents**

These Questions and Answers are intended to assist states and school districts in meeting their legal obligations to ensure that their enrollment¹ policies and practices at the elementary and secondary school levels do not discriminate on the basis of race, color, or national origin, and do not bar or discourage students' enrollment in elementary and secondary school based on their or their parents' actual or perceived immigration status. The U.S. Departments of Education and Justice encourage states and districts to proactively implement supportive enrollment policies and practices that create a welcoming and inclusive environment for all students.²

Documentation

Q - 1. Should a district inquire into the immigration or citizenship status of a student or parent³ as a means of establishing the student's residency in the district?

A - 1. No. Immigration or citizenship status is not relevant to establishing residency in the district, and inquiring about it in the context of establishing residency is unnecessary and may have a chilling or a discouraging effect on student enrollment.

Q - 2. Are students, except homeless students as provided by Federal statute, required to show current residency in a district in order to enroll in a district school?

A - 2. A state or district may establish bona fide residency requirements and thus might require that all prospective students, except homeless students as defined and provided by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 *et seq.*, furnish proof of residency within the district.

¹ For purposes of this guidance, the term "enrollment" also means registration, matriculation, or attendance in school.

² This Questions and Answers document accompanied the Dear Colleague letter on the Rights of All Children to Enroll in School, issued by the U.S. Departments of Education and Justice on May 6, 2011. This document has been updated to respond to additional questions received since the Dear Colleague letter was issued in 2011.

³ For purposes of this guidance, the term "parent" also means guardian or other responsible person under state or local law.

Q - 3. How can students meet requirements to show current residency in a school district?

A - 3. Rules vary among states and districts on what forms of documentation can be used to prove residency within a district. Districts typically accept a variety of documents as proof of residency, such as a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from a parent’s employer that is written on company letterhead.

A parent must be permitted to establish residency using any of the alternative methods provided for by state or local law. States and districts cannot apply different rules, or apply the same rules differently, to children based on their or their parents’ actual or perceived race, color, national origin, citizenship, immigration status, or other impermissible factor. All students must be treated equally.⁴

A district should review the list of documents that can be used to establish residency to ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

For example, while a district may choose to include a parent’s state-issued identification or driver’s license among the documents that can be used to establish residency, a school district may not require such documentation to establish residency or for other purposes where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.

Q - 4. Can a homeless child, including an undocumented homeless child, ever be required to show residency in a district in order to enroll in a district school?

A - 4. No. Even where a district has valid proof of residency requirements, it must exempt from those requirements all children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. These children and youth have a right to enroll in school, even if their families cannot produce the documents that would otherwise be required to prove residency.

The McKinney-Vento Act defines the term “homeless children and youth” as including, in part, “children and youths who are sharing the housing of other persons due to loss of housing,

⁴Title IV of the Civil Rights Act of 1964, which is enforced by the Department of Justice, prohibits school districts from taking actions that deprive students of equal protection of the laws. Title VI of the Civil Rights Act of 1964, which is enforced by the Department of Education, and by the Department of Justice upon referral from a Federal funding agency or through intervention in an existing lawsuit, prohibits discrimination on the basis of race, color, or national origin.

economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement,” as well as children of migratory agricultural workers. Additional information regarding the McKinney-Vento Homeless Assistance Act is available at www.ed.gov/programs/homeless/guidance.pdf.

Q - 5. How can students show they meet a school’s age requirements?

A - 5. As with residency requirements, rules vary among states and districts as to what documents students may use to show they fall within state- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose.

Depending on the state or district, alternative documents could include, but are not limited to: a religious, hospital, or physician’s certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a birth certificate; previously verified school records; or any other documents permitted by law. School districts should make parents aware of any alternatives that exist as part of their efforts to ensure a welcoming and inclusive environment for all students.

Requests for documents such as birth certificates must not unlawfully bar or discourage a prospective student from enrolling and attending school, including a student who is undocumented or has parents who are undocumented, or a child or youth who is homeless as defined by the McKinney-Vento Homeless Assistance Act (see Q-4, above). A school district may not bar or discourage a student from attending school because the student lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate. Requests for documentation also may not discriminate, or have the effect of discriminating, on the basis of race, color, or national origin. All students must be treated equally in the enrollment process.

A district, moreover, should not use a student’s birth certificate or other documentation provided by a parent as a basis for inquiring into the immigration status of the student, his or her parents, or other family members. Such requests would likely have a discouraging effect on the enrollment of a student on the basis of immigration status.

Q - 6. What if a parent is reluctant to provide a copy of his or her child’s foreign birth certificate, fearing that doing so would lead to questions about the child’s or the parent’s immigration or citizenship status?

A - 6. School districts are encouraged to take proactive steps to educate parents about their children’s rights and to reassure them that their children are welcome in district schools. For example, state laws typically permit a district to use a variety of documents to establish the age of

a child. A district should publicize that it will use a foreign birth certificate, baptismal record, or alternative document in the same manner that it will use a United States birth certificate, baptismal record, or alternative document: that is, solely to establish the age of a child.

As previously emphasized, a district must apply its rules and standards for documentation of age or residency in the same way to everyone, regardless of race, color, national origin, citizenship, or immigration status. A foreign-born child who is unable or unwilling to furnish a birth certificate should have the same options to enroll in school and should be treated no differently than a United States citizen child who does not have or otherwise may not be able to produce a birth certificate.

Q - 7. In light of the Dear Colleague letter, should districts refrain from asking for students' social security numbers?

A - 7. The Federal government does not prohibit states or districts from collecting the social security numbers of prospective or current students. States and local school districts must decide, however, whether they have a legally permissible reason to collect this information. If they choose to collect social security numbers, they should take steps to ensure the confidentiality of the social security numbers and that they are stored securely. In addition, they must follow Federal laws regulating the use of that information. For example, under governing Federal laws, if a district requests social security numbers, it must inform individuals that the disclosure is voluntary, and must explain both the statutory or other basis for seeking the numbers and how the district intends to use the numbers. See Privacy Act of 1974, Pub. L. No. 93-579, § 7, 5 U.S.C. § 552a (note), available at http://www.ssa.gov/OP_Home/comp2/F093-579.html.

As the Dear Colleague letter makes clear, a district cannot deny enrollment to a student if he or she (or his or her parent) chooses not to provide the student's social security number.⁵ Districts have alternatives to requesting social security numbers. For example, a district seeking to have student identification numbers could decide to assign a randomly selected number to each student. In this way, the state or district would avoid any chilling effect that a request for social security numbers may have on the enrollment of students because of their race, color, national origin, citizenship, or immigration status.

A school district that opts to request social security numbers should make clear in all enrollment and registration documents, including forms, websites, and communications with parents, that the provision of the child's social security number is voluntary, and that choosing not to provide a social security number will not bar a child's enrollment.

⁵ Similarly, a school district cannot deny a student enrollment if his or her parent chooses not to provide his or her own social security number.

Q - 8. How can a school district distinguish between (a) information that it should or must collect, and (b) information that it may not collect because doing so may discourage enrollment or attendance?

A - 8. There is typically only minimal information that a district is required to collect under state law for a student to be able to enroll, such as proof of age, immunization history, and residency within the district. Both the state and the district must act in compliance with the U.S. Constitution and valid Federal or state laws, including their obligations not to discriminate, or implement policies that have the effect of discriminating, on the basis of race, color, or national origin. In doing so, states and districts should also assess their current policies to determine whether they are doing anything that may have the effect, albeit unintended, of discouraging the enrollment of undocumented children, such as asking for immigration papers or social security numbers, or requiring a driver's license or state-issued identification from a parent. Such practices and policies, once identified, should be changed to eliminate any possible chilling effect on enrollment.

Q - 9. In order to avoid discouraging enrollment, should a school district enroll any child who comes its way and ask for documentation later, after the child is enrolled?

A - 9. As noted above, school districts might require that prospective students furnish proof of residency in a district and/or age prior to enrollment, except for any children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. However, districts may also choose to wait until students are already enrolled before asking for any additional documentation that may be required under state or Federal law, such as student demographic data. By choosing to wait to collect additional information, districts may create a more welcoming and inclusive atmosphere for all prospective students. Requests for documentation must not discriminate, or have the effect of discriminating, on the basis of race, color, national origin, citizenship, or immigration status.

Q - 10. Once in possession of personal information about a student, are there circumstances when a school district may disclose that information from a student's education records without the consent of the student or a parent?

A - 10. There are circumstances when a school district may disclose information from a student's education records, *but these are limited and unlikely to be applicable in the majority of situations school districts confront.* The Family Educational Rights and Privacy Act of 1974 (FERPA) generally prohibits school districts that receive Federal funds from the Department of Education from disclosing information from a student's education records that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). See 20 U.S.C.

§1232g. There are some limited exceptions in FERPA to the requirement that written consent must be obtained before disclosing personally identifiable information from students' education records, *see* 34 C.F.R. § 99.31, as well as narrow, enumerated circumstances under which Federal immigration laws require or permit a school district to provide specific information about a student to another Federal, state, or local government entity. One such circumstance is where the issuance of a non-immigrant visa to a student—and the maintenance of that student's non-immigrant status—is conditioned on the student's attendance at a specific school. Note that in that case, a school district would have preexisting information about the student that he or she would have presented to the school in order to obtain the underlying visa, and so the school would not have any reason to initiate a request for information about immigration status.

Q - 11. How should a school district communicate the requirements for enrollment with parents who have limited proficiency in English?

A – 11. For limited English proficient parents of a student seeking to enroll in a school, a district must meaningfully communicate material information about enrollment – *e.g.*, translate a document into languages other than English and have some method of responding to those parents' questions – as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703. Material information could include alternative means to establish state-permitted residency and age requirements, if any. If a district asks for a social security number, material information would also be the fact that a district cannot deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number.

Additional Proactive Support Measures That States and Districts Can Take

Q - 12. What can schools do proactively to show parents that their children are welcome, regardless of their immigration or citizenship status?

A - 12. The Dear Colleague letter encourages states and districts to review enrollment policies and practices carefully to make sure they are consistent with the law and do not have a chilling effect on the willingness of parents to enroll their children. Any problems should be corrected.

In addition, the U.S. Departments of Education and Justice encourage districts to be proactive in notifying parents of their rights to send their children to public school. For example, districts can conduct outreach to communities to inform parents that all students who are residents in the district are welcome to attend the district's schools.

Q - 13. Should districts provide staff training on how to avoid violating the law in this area?

A - 13. Staff training at the school and district level is encouraged. Ultimately, the state and district have the legal responsibility to ensure that they are complying with Federal law. Staff training helps facilitate that compliance.

Q - 14. What is the role of State Educational Agencies (SEAs) in ensuring that students are not improperly excluded from school?

A - 14. The Dear Colleague letter issued May 6, 2011, and revised and reissued on May 8, 2014, is intended to remind both districts and states of their obligations under existing law. As recipients of Federal funds, SEAs are responsible for monitoring compliance with Federal anti-discrimination laws. Because laws regarding school enrollment, including requirements for proof of age and residency, vary from state to state, this is an area in which leadership from SEAs is needed and can be particularly effective. SEAs are encouraged to review existing practices and policies and to assist their districts in understanding the types of practices that will comply with state requirements regarding school enrollment without violating constitutional and Federal anti-discrimination requirements. Specifically, SEAs should work to ensure that their school districts' enrollment practices do not unlawfully discourage or bar students, including students who are undocumented or have parents who are undocumented, from school.