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BY ELECTRONIC MAIL

Jeffrey Hastie
President, Board of Education
City School District of New Rochelle
515 North Avenue
New Rochelle, NY 10801

July 16, 2018

Lisdalia Saraiva
Records Access Officer
City School District of New Rochelle
515 North Avenue
New Rochelle, NY 10801

RE: Re-registration Process and Public Records Request

Dear Mr. Hastie and Ms. Saraiva:

We write in response to the City School District of New Rochelle's ("New Rochelle" or the "District") plan to "re-register" all students across the District in order to "ensure all children presently enrolled in the school district are legal residents of New Rochelle and entitled to a public education."¹ We understand that New Rochelle has been through a challenging year, and that this action has been undertaken based on a belief that it will contribute to safety and security in the New Rochelle schools, by presumably identifying and removing any students who are not legally enrolled.

While the District may have good intentions, we are concerned that the re-registration announcement serves to validate the misguided beliefs of some residents that *certain* students should not be permitted to enroll in New Rochelle schools. In addition, the impact of the process may actually be to deny access to students of color, those from low-income households, homeless students, and immigrants who are entitled to attend New Rochelle schools but who fail to properly re-register. By having a chilling effect on enrollment, this process could be in violation of state and federal law. We would welcome the opportunity to work with the District to implement safeguards to ensure that the re-registration process does not further harm vulnerable students.

Public school districts in New York are required to enroll students who reside in the district's catchment area and who are between the ages of 5 and 21 and have not yet received a

¹ City School District of New Rochelle, Re-Registration Communication, available at <https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/557c6321-2f84-466c-a0cb-145ca450178f?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1840823651&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22Re-Registration-Spring-2018.pdf%22&response-content-type=application%2Fpdf&Signature=aPF1bM8EmXC%2F0Na9058p4gDOqIQ%3D>.

high school diploma. We write to remind the District of its obligations under state and federal law, to caution it against using potentially discriminatory practices, and to seek assurances that the District will protect all students – including immigrant students, homeless students, students of color, and students displaced by natural disasters – and their rights to a public education in New York. We are also providing a copy of this letter to the State Education Department, which has been vigilant in reminding school districts that *all* children in New York are entitled to a public education.²

The Re-registration Plan Will Not Make Students Safer

Throughout a nine-day span in January 2018, there were multiple incidents of violence connected to New Rochelle’s high school, including a fatal stabbing.³ In response to this tragedy, the District announced steps intended to ensure that all District schools “are safe, nurturing places for students to learn and thrive.”⁴ These steps included the creation of a task force to examine school safety policies and practices; the addition of a new position, Executive Director of Security; the creation of an anonymous tip application for students to notify school personnel about bullying; and a re-registration process for all students “requiring parents and guardians to re-affirm that their children are eligible for enrollment in the district’s schools.”⁵ It appears that this re-registration process was a direct response to reports that one of the students involved in the fatal incident resided outside the District in Yonkers, New York.⁶

Public commentary around the time that the proposal for re-registration was introduced seems to show the desire of some community members to prevent certain students from enrolling. In particular, at the January 18, 2018 meeting, a resident pleaded with the board to “please, c’mon, let’s check the residency of *these* kids.”⁷ Yet another resident stated: “It’s not that we’re saying that ... these kids are bad, obviously they’re troubled.... But those parents are not here defending any of us. All the parents that are here tonight coming together, we all have children in the community and we are part of the ‘good group’ helping our children.”⁸ Other public comments were made that the re-registration process would resolve the alleged issue that “all the kids who don’t belong here are here, and at some point they came with a paper, a person, or something and

² See MaryEllen Elia and Eric T. Schneiderman, February 27, 2017 Letter, *available at* <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf> (The State Education Department and the Office of the Attorney General “write today to reaffirm to students, schools families, and communities across the State of New York that our schools will remain safe havens where all students can learn.”); *see also* Cosimo Tangorra, Jr., September 10, 2014 Memo re Educational Services for Recently Arrived Unaccompanied Children, <http://www.p12.nysed.gov/sss/documents/EducationalServicesforRecentlyArrivedUnaccompaniedChildren.pdf>.

³ Elizabeth A. Harris, *After Violence, a High School Tries to Regain Its Balance*, N.Y. TIMES, April 6, 2018, <https://www.nytimes.com/2018/04/06/nyregion/new-rochelle-high-school-stabbing-integration.html>.

⁴ January 2018 Letter from Superintendent Brian G. Osborne, *available at* https://www.nred.org/letter_from_the_superintendent.

⁵ *Id.*

⁶ Robert Cox, *New Rochelle Schools Back Off Re-Registration Commitment*, New Rochelle Talk, June 13, 2018, <https://www.newrochelletalk.com/content/new-rochelle-schools-back-re-registration-commitment>.

⁷ January 18, 2018 Board of Education Special Meeting video, https://www.nred.org/groups/15832/board_of_education/board_of_education_meetings_and_other_videos at 16:35.

⁸ *Id.* at 2:11:09.

they were able to pretend they belonged here....”⁹ And one resident stated more directly that “It’s not acceptable that children from outside our district are allowed to be in our district.”¹⁰

We fear that the re-enrollment announcement may have validated those community members’ attitudes, even if they are not held by the District. A child’s address (temporary, transitional, or permanent) is not evidence that they present a threat. Casting the re-registration as a way to make students safe by kicking out “other” students perpetuates discriminatory attitudes that make it impossible for kids to succeed. It represents a value system that is contrary to a healthy school climate, and it teaches your students to fear diversity. It is the District’s responsibility to push back against those attitudes, and demonstrate that it will not tolerate discrimination.

On the other hand, many of the recommendations from the task force seem to be closely connected to positive safety outcomes, without furthering a narrative that there is a “type” of dangerous student. We commend the District for taking a collaborative approach, considering non-punitive responses to improve school climate, and for including some student voices in the process.¹¹ We hope the District will act on some of the recommendations from the task force, and take action to mitigate the cultural and climate harms caused by the re-registration process.

State and Federal Laws Protect Students’ Rights to Enroll in School

State and federal law and regulations, in addition to well-established Supreme Court precedent, protect students’ rights to equal access to public education in New York State. In 1982, the Supreme Court in *Plyler v. Doe* held that a Texas statute authorizing “local school districts to deny enrollment to” undocumented immigrant children violated the Equal Protection Clause of the Fourteenth Amendment.¹² This case makes clear that districts cannot bar students from enrolling in school based upon their actual or perceived immigration status or that of their parents. In multiple guidance letters, New York State reiterated this standard and emphasized that “undocumented children, like U.S. citizen children, have the right to attend school full time as long as they meet the age and residency requirements established by state law.”¹³

⁹ January 23, 2018 Public Information Session to Discuss Safety & Security, https://www.nred.org/groups/15832/board_of_education/board_of_education_meetings_and_other_videos at 1:12:15.

¹⁰ January 18, 2018 Board of Education Special Meeting video at 2:14:40.

¹¹ Task Force Report: Reducing Violence in the Lives of Children and Youth in New Rochelle, New York, available at https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/929c8d0d-d1e7-4da2-9dc2-36b8f8b5613a?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1842620416&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22Final-Task-Force-Report_052518.pdf%22&response-content-type=application%2Fpdf&Signature=xNG3DAMIFbvmMzQFRYX5293HGLI%3D.

¹² *Plyler v. Doe*, 457 U.S. 202 (1982).

¹³ MaryEllen Elia and Eric T. Schneiderman, February 27, 2017 Letter, available at <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>; John B. King, August 30, 2010 Memo re Student Registration Guidance, available at <http://www.p12.nysed.gov/sss/pps/residency/studentregistrationguidance082610.pdf>.

New York’s Education Law guarantees a free public education to persons over the age of five and under the age of 21 who have not yet received a high school diploma.¹⁴ Schools may inquire about a child’s age to verify their eligibility for a free public education, and school officials may require that families present a child’s birth certificate, or if unavailable, a passport or, if unavailable, other documentary evidence of proof of age when registering a child for school.¹⁵ Also, state Education Law provides that children may attend school in the school district in which they reside.¹⁶ Residency in a school district is determined by the individual’s physical presence as an inhabitant of the school district, and the individual’s intent to reside in the school district.¹⁷ To establish a child’s residency in a school district, schools may ask for proof of address, such as a utility bill.¹⁸

However, school districts must comply with federal laws protecting the rights of students to enroll, including the McKinney-Vento Homeless Assistance Act (“McKinney-Vento”), a law that safeguards the rights of students who are homeless or in temporary housing.¹⁹ Under McKinney-Vento and its state law codification,²⁰ homeless children have the right to “immediately enroll” in school while any resolution of the student’s homeless status is resolved.²¹ Homeless children are those who lack “a fixed, regular, and adequate nighttime residence” including children who are sharing housing with others; living in trailer parks, motels, hotels, or camp grounds; unaccompanied youth; children living in a shelter; or children living in a car or a public space, such as a train station or abandoned building.²² Any necessary inquiry into the residency of a homeless student should be made keeping in mind that “using invasive or threatening techniques to confirm a student’s eligibility can humiliate families and youth and may place an already tenuous temporary living arrangement in jeopardy.”²³

In addition, it would be unlawful for school districts to require certain types of proof of address that would be onerous or unavailable to some families, for example, a property deed. A child’s physical presence and intent to remain in the district are sufficient, regardless of whether his guardians own, rent, camp, or sleep on a relative’s sofa.

Finally, both Title IV and Title VI of the Civil Rights Act of 1964 protect students from discrimination on the bases of race, color, or national origin by public elementary and secondary schools, and by recipients of federal financial assistance, respectively.²⁴ Any actions by a school

¹⁴ New York Education Law § 3202.

¹⁵ New York Education Law § 3218; *see also* 8 NYCRR 100.2(y)(3)(ii).

¹⁶ New York Education Law § 3202(1).

¹⁷ *Appeal of Raquel Plata-Morales*, Commissioner’s Op. 14,798 (2002).

¹⁸ 8 NYCRR 100.2(y)(3)(i).

¹⁹ The McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 et. seq.

²⁰ New York Education Law § 3209.

²¹ New York Education Law § 3209(5)(c); 42 U.S.C. §11432(g)(3)(E)(i).

²² New York Education Law § 3209(1)(a)(1)-(2); 8 NYCRR 100.2(x)(1).

²³ Robert Reyes, Director, Title I School and Community Services, October 2009 Memo, “McKinney-Vento Guidance Regarding Shared Housing Affidavit,” *available at*

<http://www.p12.nysed.gov/accountability/homeless/GuidanceRegardingSharedHousingAffidavit.html>.

²⁴ 42 U.S.C. §2000c-6; 42 U.S.C. §2000d; *see also* May 8, 2014 Dear Colleague Letter, *available at* <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>.

district that target students of a particular race, color, or country of origin, and attempt to discourage their enrollment in school may violate these federal civil rights laws.

Re-registration May Create Impermissible Barriers to Enrollment

The re-registration process in New Rochelle may create several barriers for marginalized students, could have an impermissible chilling effect on the participation of certain children in school, and may contravene state and federal law. According to a communication from the District regarding the re-registration process, families are required to provide documentation demonstrating “proof of residency, proof of student age” and “proof that the student(s) is/are living with you and that you have legal custody.”²⁵ The District also provided a document on its website entitled “Documentation to Establish Residency” that enumerates certain documents that can be used to establish residency and age²⁶ and provided a letter to families outlining the documents needed for the re-registration process.²⁷ The implementation of this process and these communications may lead to students being improperly barred from enrollment.

First, homeless students, undocumented students, and students in temporary housing may not have access to necessary documents to prove residency and/or age. However, failure to provide these documents is not a permissible reason under the law to refuse immediate enrollment for these students. *Second*, students who are homeless or undocumented may not be able to adhere to the deadlines for the re-registration process. Again, the failure to adhere to re-enrollment deadlines is not grounds for refusal to enroll a student.²⁸ *Third*, the re-registration process may deter already-marginalized families from attempting to enroll in New Rochelle, even if they have already been a part of the school district. In an era when immigration enforcement is at an all-time high, families with undocumented members may be discouraged from enrolling in the District, even though they are legally entitled to do so. *Fourth*, even if families attend their re-registration session, it is possible that untrained staff members could unintentionally request impermissible documents from students (e.g. social security numbers, documents to indicate immigration status) or refuse to accept legally permissible documents. *Fifth*, some of the publicly available documents from the district could be misleading. The letter informing families of their re-registration appointments does not include a complete list of all of the permissible documents to prove a child’s age.²⁹

²⁵ See *supra*, note 1.

²⁶ See https://www.nred.org/ny_state_residency_rules. This document also seems to misstate the law of residency. It states that children between the ages of 6 and 21 may enroll in school. However, NY law allows students between the ages of 5 and 21 to enroll.

²⁷ June 19, 2018 Letter from Superintendent Brian Osborne, available at <https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/ec9a6660-423f-45e1-b6d9-0b72138d31f0?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1845657512&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22Re-Reg%2520Letter%2520EnglishSENT.pdf%22&response-content-type=application%2Fpdf&Signature=gsWGrZ6VL17cO9q4uNOFIQ9SEpQ%3D>.

²⁸ See 42 U.S.C. §11432(g)(3)(C); see also Ira Schwartz, September 29, 2016 Memo re Implementation of Changes to McKinney-Vento Homeless Act as a Result of Passage of Every Student Succeeds Act, available at <http://www.p12.nysed.gov/accountability/homeless/docs/MVESSAFMEMO.pdf>; see also Jhone M. Ebert, October 12, 2017 Memo re Students Displaced by Recent Hurricanes, available at <http://www.nysed.gov/common/nysed/files/students-displaced-by-recent-hurricanes.pdf>.

²⁹ See *supra*, note 27; see also New York Education Law § 3218; see also 8 NYCRR 100.2(y)(3)(ii).

Finally, the requirement that a parent prove that he or she has legal custody may conflict directly with the Commissioner’s Regulations, which state that a school board “may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.”³⁰

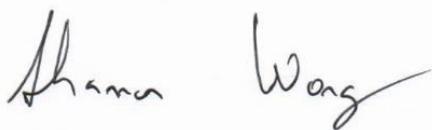
Schools must not erect barriers during the student registration process that will prevent children from exercising their right to an education. While the District and task force have taken commendable actions to gather community input to keep students safe and improve school climate across the District, the use of re-registration is a misstep that can have a real, negative impact on families in New Rochelle.

We urge the board to reconsider this practice and to ensure that the implementation of this re-registration process does not make enrolling in school more difficult for the neediest families in the District. The District must ensure that any requests for documents comply fully with all state and federal laws, including the McKinney-Vento Act. It must take steps to thoroughly train all District personnel to be certain that no family is turned away impermissibly. Further, we encourage the board to undertake an assessment of the school-level and district-level enrollment data to uncover whether this re-registration process has had a disparate impact on any group of students in the District. Finally, we remind the District of its obligation to protect all students and their rights to a public education in New York.

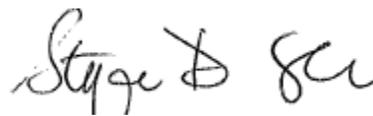
Accordingly, the New York Civil Liberties Union seeks further information about the creation and implementation of this re-registration policy and we attach hereto a public records request pursuant to the New York Freedom of Information Law (“FOIL”). *See* Exhibit A.

We welcome the opportunity to discuss this further with you. Please do not hesitate to contact us with further questions. I can be reached at 212-607-3315 or scoble@nyclu.org.

Sincerely,



Shannon Wong
Chapter Director, Lower Hudson Valley



Stefanie D. Coyle
Education Counsel

cc: Brian G. Osborne, Superintendent of Schools, New Rochelle City School District
Khin Mai Aung, Director of English Language Learner Civil Rights & Policy, NYSED
Kathleen DeCataldo, Assistant Commissioner for the Office of Student Support Services, NYSED

³⁰ 8 NYCRR 100.2(y)(3)(i)(C).

Exhibit A

The New York Freedom of Information Law requires a response within five business days of your receipt of this letter. Please provide an estimated timeframe within which the requested records are to be produced. If for any reason any portion of this request is denied, please inform us of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed. If you determine that any portion of the requested records are exempt from disclosure pursuant to FOIL, please delete only the material claimed as exempt, inform us of the basis for the exemption claim, and furnish copies of those portions of the records that you determine not to be exempt.

We agree to compensate you for the cost of duplicating the records we request, as provided by law. Upon locating the requested documents, please contact us prior to photocopying and advise us of the actual costs of duplication so that we may decide whether a narrowing of the request will be necessary. To the extent that records are available in electronic format, we request that they be provided in that format.

Please send responsive records to:

Stefanie Coyle
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004
scoyle@nyclu.org

Definitions and General Parameters:

The term “record(s)” is to be construed in its broadest sense in accordance with New York FOIL to include anything upon which information is recorded, including all documents, papers, letters, email correspondence, maps, books, tapes, photographs, films, recordings or other material, and electronic records, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business.³¹

The request is limited to records created or obtained between **January 1, 2018 and the present**.

Specific Requests:

1. Any records reflecting communications between or among members of the School Board and/or school district staff regarding the creation and implementation of the re-registration process, including, but not limited to, board minutes and related materials, communications with the New York State Education Department; communications regarding the rationale for the program; any issues or concerns raised; and communications regarding the revision of the timeline and scope;

³¹ N.Y. PUB. OFF. LAW § 86(4).

2. Any records containing comments or other feedback from parents, students, teachers, staff, or others concerning the re-registration process;
3. Any records reflecting communications to parents or school district staff about the re-registration process;
4. Any records relating to the implementation of the re-registration process, including any procedures, protocols, or other rules governing re-registration or verification of student residency or age;
5. Any records reflecting the training received by the staff members participating in the re-registration process;
6. Any records reflecting the appeals process for residency determinations made as part of the re-registration process and any communication of this process to students, parents, staff, and community members;
7. Any forms or documents to be utilized in the re-registration process;
8. Any minutes of the Task Force on Reducing Violence in the Lives of Children and Youth and its proposed recommendations; and
9. Any records regarding the selection of Former Port Chester Schools Superintendent Charles Coletti to lead the re-registration effort.