



NYCLU

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VIA FACSIMILE AND FIRST CLASS MAIL

July 21, 2010

David M. Steiner
Commissioner, New York State Education Department
89 Washington Avenue
Albany, New York 12234

Re: Unconstitutional Student Enrollment Practices

Dear Commissioner Steiner:

We write for the fourth time to ask that the New York State Education Department (“SED”) take immediate steps to ensure that school districts in New York discontinue practices that may deprive undocumented children of their right to a public school education. As explained in our previous letters, many school districts in New York State appear to be discriminating against undocumented children by mandating or requesting that families provide proof of their child’s lawful immigration status when registering that child for school. We ask that you take immediate steps to ensure that all children in New York State are able to exercise their right to a public education, regardless of their immigration status.

New York’s undocumented children have the same right as other children living in New York to a free public education. In 1982, the United States Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202, that states violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution when they deny undocumented children the same education opportunity that is provided to United States citizens.

Schools must not erect barriers that will prevent undocumented children from exercising their right to an education or implement practices that have a chilling effect on immigrant students seeking to register for school. Requiring proof of a child’s immigration status in order to register for school creates an impermissible barrier to education. Indeed, even when a school district does not make immigration status an explicit condition of enrollment, requiring such information or inquiring into a child or parent’s immigration status during the registration process will inevitably discourage families from enrolling in school for fear that they would be reported to federal immigration authorities as a result.

State law provides guidance for school districts on how to obtain information about a child’s eligibility for a public education—including their age and residency—without infringing on a child’s constitutional rights. First, 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 received a high

school diploma. Education Law §3202. 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. Education Law §3218. Second, state Education Law provides that children may attend school in the school district in which they reside. Education Law §3202(1). 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. *Appeal of Raquel Plata-Morales*, 42, Ed. Dept. Rep. Op. 14,798 (2002). A child's residence is presumed to be that of his or her parents. *Catlin by Catlin v. Sobol*, 155 AD2d 24, rev'd on other grounds, 77 NY2d 552 (1991). To establish a child's residency in a school district, schools may ask for proof of address, such as a utility bill.

As we explain below in greater detail, at least 20 percent of school districts in New York State appear to be going well beyond state law guidance by mandating or requesting that children provide additional documentation that would reveal their immigration status. Asking for such documentation is at best irrelevant to proving eligibility to attend school in a particular district, and at worst a deliberate attempt to prevent undocumented children from enrolling in school. Regardless of where a district's policies fall in this spectrum, they surely have the impact of either directly preventing qualified children from enrolling in school or chilling families with undocumented members from attempting to enroll a child in school in the first place.

We first wrote to you on September 8, 2009 to bring to your attention information on five school districts that appeared to condition enrollment in their schools based on the ability of their families to provide proof of their child's lawful immigration status. We explained in our letter that a cursory search by the New York Civil Liberties Union found these five school districts, and we asked that SED take immediate steps to review the registration requirements of all school districts in the state.

On December 14, 2009 we wrote to SED yet again to request that your office take immediate steps to ensure that school districts do not deprive undocumented children of the right to register for school. We never received a satisfactory response, and on February 5, 2010 we wrote to your office for a third time explaining that SED is failing to adequately protect the constitutional right of undocumented children to enroll in public schools.

Unfortunately, the SED has yet to respond to this civil rights crisis with the thoroughness and urgency that it deserves. The sole action taken by SED in response to our concerns has been to post a short notice buried in a much longer SED electronic news bulletin that reminded districts of a past Commissioner's decision on what type of documentation schools may require for proof of a child's age for admission to school.¹ It is our understanding that SED did not ask that the offending school districts revise their policies nor did it inquire about other school districts in the state that may maintain similar policies. Most alarmingly, it does not appear that SED officials made any effort to reach out to families and children who may have been prevented from registering for school based solely on their immigration status.

¹ In an April 20, 2010 letter to the NYCLU, SED Assistant Counsel Kate Gaffney stated that the SED will not take any additional actions to respond to our concerns.

Given that the State Education Department has failed to respond adequately to this pervasive problem, the NYCLU has taken several steps to ensure that school districts refrain from discriminating against undocumented children in their registration procedures; steps that should have been performed by SED officials. First, the NYCLU sent letters to the five school districts referenced in our September 2009 letter to ask them to revise their policies. Four of the five school districts agreed to revise their policies.

Second, the NYCLU reviewed the registration policies and practices for most school districts in New York State. We were shocked to learn that at least 139 school districts (20 percent of all school districts) in New York appear to have in place registration policies that directly or indirectly discriminate against undocumented children by mandating or requesting that families provide proof of their child's lawful immigration status when registering that child for school. These practices appear to range in their discriminatory intent and potential impact:

- Some districts have in place glaringly discriminatory registration practices. Take, for example, the Spencerport Central School District. In its student registration checklist, it states: "If your child is not a U.S. citizen by birth, please bring your child's I-94 form a Resident Alien card (green card) [*sic*]. If the card is expired it will not be accepted." Moreover, in its registration application, the school district includes an entire section on "immigration status" that families must complete, and states that "immigration papers must be provided."
- Other school districts, like the Sweet Home Central School District, ask about a child's "Visa Expiration Date" and state that "If not US Citizen, must provide a passport, VISA to verify length of stay."
- Yet others, like the Oxford Academy and Central Schools, mandate that children provide their Social Security number when registering. While this may not appear to discriminate against undocumented children, undocumented children are ineligible for Social Security numbers, and will be, thus, unable to register for school.²

In order to rectify these and other impermissible restrictions, the NYCLU sent today letters to all 139 school districts asking that they immediately revise their policies and inform students who may have been denied enrollment as a result of these policies about their right to attend school regardless of their immigration status. Attached to this letter you will find a copy of the letter we sent to school districts and a list of the school districts to whom we sent it.

We ask that you take immediate steps to rectify this serious problem. We have waited 10 months for a satisfactory response, and we may never know how many children have been

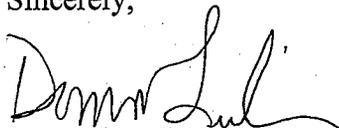
² Mandating that children provide their Social Security number when registering for school also raises concerns under the federal Privacy Act of 1974. Under Section 7 of the Act, state and local government agencies requesting an individual's Social Security number must also make the following disclosures: (1) whether disclosure of a Social Security number by the individual is mandatory or voluntary; (2) the authority by which the Social Security number is solicited; and (3) the uses to which such information shall be put.

deprived of an education because of SED's failure to act. Specifically, we ask that you take the following steps:

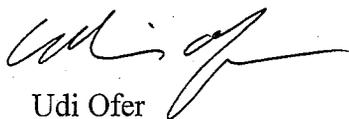
- Issue a formal directive to all school districts regarding appropriate student enrollment procedures and prohibiting the request of documentation/information that would indicate whether a student or his/her parent(s) are lawfully present in the United States. The directive should include clear and concise information on what documentation districts may require to fulfill registration requirements;
- Mandate that school districts revise their registration forms, including registration forms posted on their websites, so that they comply with the law;
- Issue a model registration form that districts may use to enroll students; and
- Monitor school districts' compliance with the SED directive and federal and state law.

Given the urgency of this matter, and the fact that the new school year will soon commence, we will consider alternative actions should SED fail to ensure that undocumented children are not barred or discouraged from registering for school by virtue of policies that require or request documentation of immigration status. Please inform us of any and all steps that you take to remedy this situation. You may reach Udi Ofer by phone at 212-607-3342 or by email at uofer@nyclu.org.

Sincerely,



Donna Lieberman
Executive Director



Udi Ofer
Advocacy Director

cc: Governor David Paterson
Attorney General Andrew Cuomo
Chancellor Meryll Tisch
Timothy Blanchard, Office for Civil Rights, US DOE
Jay Worona, General Counsel, New York State School Boards Association, Inc.