VIA EMAIL

October 29, 2014

John King
Commissioner, New York State Education Department
89 Washington Avenue
Albany, New York 12234

Re: Unconstitutional Student Enrollment Practices

Dear Commissioner King:

Thank you for your commitment to working with the attorney general’s office to reduce unlawful barriers to enrollment for immigrant children across New York. This situation has reached a crisis point, with each day bringing new stories of children denied access to the basic human right of education. Given the significant number of recently immigrated children currently living with relatives in the New York City metropolitan area, it is of utmost importance that New York State becomes a leader in providing a fair, free and appropriate education to all its children. We ask that the New York State Education Department (“SED”) take immediate steps to ensure that all school districts in New York adopt enrollment forms and requirements that affirm every child’s right to an education.

In 2010, the NYCLU issued a report documenting 139 New York school districts with facially impermissible enrollment requirements. These included requirements that students prove their immigration status and even citizenship (our 2010 letter is enclosed) to register. We recently re-reviewed enrollment policies for those 139 districts and we write today to share the results with you. Shockingly, even among those districts that made revisions, dozens have yet to meet the standards set out in the 2010 SED guidance.¹

Disappointingly, some of the issues we uncovered when reviewing registration packets were the same issues we pointed out in 2010 that have still not been addressed. Ten districts continue to state that social security cards or social security numbers are required for enrollment.² We also identified 15 districts that still ask about students’ immigration status, including nine that

² Cuba-Rushford Central School District (Allegany); Oneida City School District (Madison); Valley Stream Union Free School District (Nassau); Manchester-Shortsville Central School District (Ontario); Mattituck-Cutchogue Union Free School District (Suffolk); Williamson Central School District (Wayne); Palmyra-Macedon Central School District (Wayne).
ask whether students are U.S. citizens. We also identified less obvious, but still chilling, registration requirements in many of the districts’ policies we reviewed. Specifically, a majority have unnecessarily restrictive document requirements to prove a student’s age and residency. We discuss those in turn below. It is simply unacceptable for districts to still have these improper policies in place. We urge SED to act deliberately to put an end to this.

Legal Landscape

New York’s undocumented children have the same right as all 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 educational opportunity provided to United States citizens.

This denial can be explicit—such as only enrolling students who can prove U.S. Citizenship— but it is more often subtle— such as requiring unnecessary proof of age or residency documentation that can be prohibitive for immigrant families. The *Plyler* decision has long been interpreted to prohibit these subtle barriers that may “chill” a child or her parents from engaging with the school. Unfortunately, dozens of New York School districts have erected barriers that will undoubtedly have a chilling effect on immigrant students seeking to register for school. Specifically in the areas of proof of age and proof of residency, we urge SED to decisively identify and eliminate impermissible requirements.

Proof of Age

As SED pointed out in its 2010 guidance, schools are permitted to accept a range of documents as proof of a child’s age, in cases where the original birth certificate or passport is unavailable. N.Y. Education Law §3218 (1)(d). These documents can include a baptismal certificate, hospital record, or consular ID. Yet, in examining only the 139 districts we identified as problematic four years ago, the NYCLU identified 73 that require a birth certificate to enroll as of October 2014. Twenty-five of those districts are in the New York City metropolitan area. Eighteen require an original, or “raised seal” birth certificate. Of the nearly 700 school districts across the state, there are undoubtedly dozens—or hundreds—more with similar chilling requirements.

3 Vestal Central School District (Broome); Homer CSD (Cortland); Amherst CSD, Cheektowaga CSD (Erie); Greenville CSD (Greene); Carthage CSD, Lyme CSD, Watertown City School District (Jefferson); Oneida City School District (Madison); Gates-Chili CSD, Hilton CSD, Penfield City School District, Pittsford CSD, Spencerport CSD (Monroe); Dryden CSD (Tompkins).

4 Dover Union Free School District, Beacon City School District (Dutchess); Valley Stream 13 UFSD, Island Trees UFSD, Great Neck UFSD, East Meadow UFSD, Plainedge UFSD (Nassau); Wallkill CSD, Monroe-Woodbury CSD, Highland Falls CSD (Orange); Mattituck-Cutchogue UFSD, Eastport-South Manor CSD, Three Village CSD, Bay Shore UFSD, Amagansett UFSD, Amityville UFSD (Suffolk); Tri-Valley CSD, Livingston Manor CSD (Sullivan); Somers CSD Rye Neck UFSD, Pelham UFSD, Hastings-on-Hudson UFSD, Dobbs Ferry UFSD, Croton-Harmon UFSD (Westchester).

5 East Meadow UFSD, Great Neck USFD, Island Trees UFSD, Plainedge UFSD, Valley Stream UFSD, (Nassau); Starpoint CSD (Niagara); Baldwinsville CSD (Onondaga); Manchester-Shortsville CSD (Ontario); Marcus Whitman CSD (Ontario-Yates); Monroe-Woodbury CSD, Wallkill CSD (Orange); Lyndonville CSD (Orleans); Schalmont CSD (Schenevuctady); Eastport-South Manor CSD, Mattituck-Cutchogue UFSD (Suffolk); Onoera CSD (Ulster); Elmsford UFSD, Hastings-on-Hudson UFSD (Westchester).
Proof of Residency

While state Education Law provides that children may attend school in the school district in which they reside, providing the proof of residence required by many districts can be an impossible barrier for an immigrant family. N.Y. Education Law §3202 (1). According to SED’s guidance, to establish a child’s residency in a district, schools may request proof of address, such as a utility or other bill, state-issued ID card, or membership card such as a library card. But many districts, especially in the New York City metropolitan area, have erected prohibitive barriers to proving residency, requiring the production of an electric or water bill, New York State driver’s license, or original lease or deed. This is such a pervasive problem that we have elected not to identify specific districts here.

While all districts we researched permit students to claim temporary or transitional housing pursuant to the McKinney-Vento Homeless Assistance Act, 42 USC §11431 et seq., a federal law that protects the right of homeless and housing-unstable youth to attend school, the NYCLU is concerned that families in more traditional, but still temporary, living arrangements may not understand they are eligible to enroll in school under that law. Under McKinney-Vento, the burden to provide required documents is lifted, permitting young people in transitional situations to register for school unimpeded.

Eligible families (and some advocates) are largely unaware of the McKinney-Vento provisions because neither individual districts nor SED have adequately publicized the program. More often than not, this entitlement to register is hidden in a “residency questionnaire” that asks personal questions, such as “are you living in a car” without indicating any benefit to the family or reason for answering them. According to the U.S. DOE, “unaccompanied children...who are released to live with a sponsor may be eligible [for enrollment pursuant to McKinney-Vento’s provisions] on a case-by-case basis under the law's broad definition, which includes youth who are living with family members in "doubled-up" housing, i.e., sharing the housing of other persons due to economic hardship or a similar reason.”

In order to rectify the impermissible restrictions described above, we ask that you take decisive steps. Specifically, we urge SED to issue a model enrollment form and list of permissible evidentiary documents. This was a recommendation we made to SED in 2010 that has not been implemented. We also urge you and the attorney general to actively monitor school districts’ compliance and act decisively on noncompliance, now and in the future. Finally, we recommend that you undertake a public education campaign to increase awareness and understanding of the McKinney-Vento Act and the benefits it provides to families and children in transition.

We are available as a resource and are willing to share our review of 139 districts’ enrollment policies with you. You may reach Johanna Miller by phone at 212-607-3352 or by email at jmiller@nyclu.org.

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Sincerely,

Donna Lieberman  Johanna E. Miller
Executive Director  Advocacy Director

cc:  Governor Andrew Cuomo
     Attorney General Eric Schneiderman
     Chancellor Merryl Tisch
     Jay Worona, General Counsel, New York State School Boards Association, Inc.