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March 9, 2017

Mr. Benjamin Vinson, Chairman
Immigration Enforcement Review Board
270 Washington Street, SW, Suite 1-156
Atlanta, Georgia 30334

Re: Complaint No. 2017 – 03 filed by D.A. King
Date of Complaint – January 17, 2017
Agency Complaint Against – Cross Keys High School
Provision Allegedly Violated - O.C.G.A. § 50-36-1

Honorable Chairman Vinson:

The DeKalb County School District ("DCSD" or "School District") is in receipt of the February 23, 2017, letter from Carol G. Schwinne, regarding the above referenced matter. Ms. Schwinne's letter enclosed the January 17, 2017, Complaint filed by D.A. King ("Complaint") with the Immigration Enforcement Review Board ("Board"). The Complaint filed by D. A. King ("Complainant" or "Mr. King") attacks the program offered to parents of students at Cross Keys High School ("Program") which is located within DCSD. The Program enhances the parent's literacy and language skills in order to support their child's academic development. The Complaint alleges that there is no evidence of the lawful presence in the United States of the parents who participate in the Program.

DCSD respectfully requests that the Board dismiss the Complaint, without hearing or further action, for the below five (5) reasons. Should the Board decide not to dismiss the Complaint, then DCSD requests that the enclosed Motion for Subpoenas to Compel the Production of Documents, filed pursuant to Board Rule 291-2-.03(3), be granted in its entirety. DCSD respectfully seeks the issuance of the subpoenas prior to the scheduling of any hearing regarding this matter.

I. Background Related to Lawful Presence of Students

As a factual backdrop, no verification of lawful presence in the United States is needed for children prior to entering school in Georgia. See O.C.G.A. § 20-2-150, entitled "Eligibility for enrollment." O.C.G.A. § 20-2-150 (a) states, in pertinent part, that "[U]nless otherwise provided by law, the State Board of Education shall have the authority to determine the eligibility of students for enrollment." The Georgia Department of Education ("GDOE") provides that "Immigrants/non-visa holders who meet age and residency requirements shall be accepted by a [Local Educational Agency

“LEA”] and the LEA shall not inquire about their legal status.” See GDOE Guidance for State Board of Education Rule 160-5-1-.28, Student Enrollment and Withdrawal, page 1, a copy of which is attached hereto as Exhibit “A.”

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 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.” See 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. Since no verification is required for children, the Complaint seeks verification of the lawful presence of the parents in the Program without proving that the parents actually applied for a public benefit which involves adult education.

II. Basis For Dismissal of The Complaint

First, the Complaint should be dismissed since verification of lawful presence in the United States is not required pursuant to O.C.G.A. § 50-36-1(d) (1). Assuming, arguendo, that the Complainant has established an “Applicant,” “Public benefit,” or “Adult Education,” as contemplated by O.C.G.A. § 50-36-1(a), the Program at issue falls within the exception set forth in O.C.G.A. § 50-36-1(d) (1). That Georgia Code provision states: “(d) Verification of lawful presence in the United States under federal immigration law under this Code section shall not be required: (1) For any purpose for which lawful presence in the United States under federal immigration law is not required by law, ordinance, or regulation.” Here, the Program falls within the regulation issued jointly by the U.S. Department of Justice, U.S. Department of Education and U.S. Department of Health & Human Services. See Exhibit “B,” attached hereto and incorporated herein by this reference. Page 2 of Exhibit “B” states, in pertinent part, that “A school district **may not** ask about citizenship or immigration status of the adult enrolling the child or of the child to establish residency within the district, . . .” (Emphasis in original). Here, the Complainant seeks the immigration status of the parents in the Program. Those parents, however, have students enrolled in Cross Keys High School. Therefore, obtaining the immigration status of those parents will violate the regulation issued jointly by the U.S. Department of Justice, U.S. Department of Education and U.S. Department of Health & Human Services because they have children enrolled at Cross Keys High School. See Exhibit “B.” Accordingly, the Complaint should be dismissed.

Second, the Complaint should be dismissed for failure to attach documents referenced in three (3) separate instances by the Complainant in the Complaint itself. Specifically, the Complaint states:

According to various new reports, including one **HERE**, Cross Keys High School has in place an ongoing program of adult education for parents of students. . . . I filed an open records request in December, 2016 seeking the required affidavits and secure ID documents that

should be offered and collected from applicants for these adult education classes. It can be seen **HERE**, along with a response saying it would take 10 days to complete (**HERE**). I have not received the required documents and I submit the reason is that they do not exist.

See Complaint, attachment number 2, emphasis added.

The Complaint fails to attach those documents referenced above by “**HERE**.” Also, the Complaint fails to provide information needed to access an electronic link to those documents noted by “**HERE**.” These documents form the basis of and are vital to the sustainability of the Complaint. Therefore, the Complaint should be dismissed for failure to attach the necessary documents.

Third, the Complaint fails to establish a violation in that Complainant does not identify any “Applicant” as required by O.C.G.A. § 50-36-1, who received public benefits after approval of their application. In short, Mr. King’s Complaint alleges that verifiable documents and affidavits, demonstrating lawful presence in the United States, were not obtained from the parents who participated in the Program at Cross Keys High School. O.C.G.A. § 50-36-1(a) (3) defines “Applicant” as “any natural person, 18 years of age or older, *who has made application* for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.” (Emphasis added). Here, the Complaint fails to present any evidence of an “Application” submitted by parents who attended the Program. The parents simply register on line or in person for the workshops. See Exhibit “C,” which is a copy of the offering related to Cross Keys High School. The entire offerings can be viewed at <http://www.dekalbschoolsga.org/documents/parent-resource-centers/fec-course-catalog.pdf>. Accordingly, the Complaint must be dismissed since none of the parents involved with the Program completed or submitted “Applications” as contemplated by O.C.G.A. § 50-36-1(a) (3).

Fourth, no violation of O.C.G.A. § 50-36-1 occurred since the Complaint fails to establish a “Public benefit” as funds provided by sources other than the School District are used to administer the Program and to pay the teachers of the Program. O.C.G.A. § 50-36-1(a)(4) defines “Public Benefit” as “a federal, a state, or local benefit ...” Here, the Program is administered by Literacy Action, Inc., a private adult education non-profit organization. The mission of Literacy Action is to help “adults to gain the skills they need to become self-sufficient employees and parents.” See Exhibit “D,” which is a copy of the January 10, 2017, letter from Austin Dickson, Executive Director of Literacy Action. “The organization accomplishes its mission in many ways, including training and supporting volunteers to serve low-literate communities in which they live.” See Exhibit “D.” Since Literacy Action, and not DCSD, administers the Program and supplies the teachers, there is no “Public benefit” as construed by O.C.G.A. § 50-36-1(a) (4).

DCSD supplies the space for the Program, which is actually only one classroom. Title I funds are only used for books and workshop facilitators for the Program. Title I is a part of the No Child Left Behind Act of 2001. Since Title I funds are federal funds, their use in the Program falls within the exception noted in O.C.G.A. § 50-36-1(d) (1), which exception is explained above.

Even if the use of Title I funds in the Program does not fall within the exception noted in O.C.G.A. § 50-36-1(d) (1), a separate basis exists for the dismissal of the Complaint. The Program

simply follows, as explained below in detail, the requirements of federal law, with regard to the mandates associated with the use of Title I funds. If the relief sought by Mr. King is provided, then the result is that DCSD will violate federal law.

With regard to Title I disbursements, federal funds are provided to DCSD through the GDOE. Title I, Section 1118, is entitled "Parental Involvement." Subsection (e) (3) states:

To ensure effective involvement of parents and to support a partnership among the school involved, parents, and the community to improve student academic achievement, each school and local educational agency assisted under this part —

- (1) **shall provide assistance to parents of children served by the school** or local educational agency, as appropriate, in understanding such topics as the State's academic content standards and State student academic achievement standards, State and local academic assessments, the requirements of this part, and how to monitor a child's progress and work with educators to improve the achievement of their children;
- (2) **shall provide materials and training to help parents to work with their children to improve their children's achievement, such as literacy training and using technology, as appropriate, to foster parental involvement;**
- (3) shall educate teachers, pupil services personnel, principals, and other staff, with the assistance of parents, in the value and utility of contributions of parents, and in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between parents and the school;
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- (9) may train parents to enhance the involvement of other parents;
- (10) may arrange school meetings at a variety of times, or conduct in-home conferences between teachers or other educators, who work directly with participating children, with parents who are unable to attend such conferences at school, in order to maximize parental involvement and participation;
- (11) may adopt and implement model approaches to improving parental involvement;
- (12) may establish a districtwide parent advisory council to provide advice on all matters related to parental involvement in programs supported under this section;
- (13) may develop appropriate roles for community-based organizations and businesses in parent involvement activities; and
- (14) **shall provide such other reasonable support for parental involvement activities under this section as parents may request.**

See Title I, Section 1118, Subsection (e) (3) (Emphasis added).

Here, with respect to the Program, DCSD is simply following the Title I mandate that the funds “shall” be used, among other things, to “**help parents to work with their children to improve their children's achievement.**” DCSD’s refusal to assist the parents of students enrolled at Cross Keys High School would result in a violation of that Title I mandate, as well as the other mandates set forth above.

Moreover, the Program at issue does not provide the parents the assistance usually associated with a “Public Benefit.” For example, DCSD does not provide the parents a monetary stipend in conjunction with attending the Program. Also, the parents are not reimbursed for travel expenses they incur in connection with the Program. Since Literacy Action, and not DCSD, provides qualified volunteer teachers, lesson plans and program management, there is no “Public Benefit” which results in favor of the parents who participate in the Program. Accordingly, the Complaint should be dismissed.

Fifth, the Program does not violate O.C.G.A. § 50-36-1, since the Complaint fails to establish that the Program is “Adult Education” as contemplated by the statute. Although “Adult Education” is included in the definition of “Public benefit,” as used in O.C.G.A. § 50-36-1(a) (4), no course credit towards a GED is given to the parents who participate in the Program. Even though a pre and post assessment is given to the parents to ensure that there is an accurate understanding of language proficiency and improvement, no tests are conducted which result in credit towards a GED. The workshops simply provide parents with the skills necessary to support their child’s education as required by Title I. See Exhibit “D.” The goal of the Program is to teach the parents basic skills as well as the vocabulary necessary to communicate with teachers and administrators. Id. The workshops are only ninety minutes long. See Exhibit “D.”

Additional evidence supports the School District’s position that the Program does not involve “Adult Education” within the meaning of O.C.G.A. § 50-36-1. Here, completion of the Program does not result in the award of a “certificate of completion” which is provided to the parents. A “certificate of completion” is the hallmark of most “Adult Education” programs. No “certificate of completion” is awarded because the parents attend workshops as opposed to “classes” similar to those attended by true “Adult Education” programs. Clearly, the Program in the instant Complaint does not involve “Adult Education” as contemplated by O.C.G.A. § 50-36-1. Consequently, the Complaint should be dismissed.

III. Conclusion Regarding Complaint

In sum, the above paragraphs set forth five (5) separate and distinct reasons which support the dismissal of the Complaint. Here, the Complaint is defective on its face for failure to attach the necessary documents referenced in the Complaint. In addition, the Complainant has not established an “Applicant,” “Public benefit,” or “Adult Education” as contemplated by O.C.G.A. § 50-36-1(a). Even if the Complainant has met this burden, the Program at issue falls within the exception set forth in O.C.G.A. § 50-36-1 (d) (1). Further, the School District, with regards to the Program, is following the federal law which requires that the associated funds be used to help parents to work with their children to improve their children's achievement. Complainant would have the School District violate federal law. Therefore, the School District respectfully requests that the Complaint be

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dismissed. If this Honorable Board should deny DCSD's request to dismiss the Complaint, DCSD respectfully requests that the attached Motion for Subpoenas to Compel the Production of Documents be granted in its entirety.

Thank you for your consideration in this matter. Please contact me if you should have any questions. You may contact me directly at (678) 676-0420 and my fax number is 678-676-0234. My e-mail address is: glinton_darien@dekalbschoolsga.org.

Respectfully submitted,



Glinton R. Darien, Jr.
Assistant Legal Officer
Office of Legal Affairs

Enclosures: Exhibits "A," "B," "C," and "D."
cc: D.A. King (w/enclosures) (via regular U.S. Mail)
Carol G. Schwinne (w/enclosures) (via E-Mail)