

THOMPSON, SWEENEY, KINSINGER & PEREIRA P.C.

LAW OFFICES

V. LEE THOMPSON, JR.
VICTORIA SWEENEY
ELIZABETH F. KINSINGER
STEPHEN D. PEREIRA
FRANK HARTLEY (GA & PA)
W. CREIGHTON LANCASTER
CATHERINE T. FOLLOWILL
JILL T. HAUSERMAN
ERICA TAYLOR

LONGLEAF COMMONS
690 LONGLEAF DRIVE
LAWRENCEVILLE, GEORGIA 30046

TELEPHONE: 770-963-1997
TELECOPIER: 770-822-2913

MAILING ADDRESS:
P.O. DRAWER 1250
LAWRENCEVILLE, GEORGIA 30046

March 17, 2017

Via Regular Mail

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

RE: Response of Gwinnett County School District

Dear Mr. Vinson:

I write on behalf of and as legal counsel for the Gwinnett County Board of Education ("GCBE") in response to a letter dated February 23, 2017 which concerns a complaint filed by D.A. King with the Department of Audits and Accounts. Please direct any further communication concerning this matter to the undersigned.

In the instant matter, the complainant alleges that GCBE violated O.C.G.A. § 50-36-1 by providing a public benefit, namely "adult education," without complying with the statute's requirement to verify the applicant's lawful presence in the United States. However, GCBE is lawfully permitted to provide English-language literacy and technology training classes (collectively referenced as "the GCBE programs") to undocumented adult immigrants because (i) the verification of lawful presence required under O.C.G.A. § 50-36-1 is in direct conflict with the purposes and objectives of the federal statute that authorizes and funds the GCBE programs; (ii) the GCBE programs do not constitute a "public benefit" under O.C.G.A. § 50-36-1; and (iii) the Supreme Court restrained the authority of states to restrict education access to undocumented immigrants.

- i. **The verification requirements under O.C.G.A. § 50-36-1(b) are in direct conflict with the purpose and objectives of Title III of the Every Child Succeeds Act and unlawfully hinder its enforcement.**

One stated purpose of the Every Child Succeeds Act (ESSA) is to "promote parental, family, and community participation in language instruction educational programs for the

parents, families, and communities of English learners.” 20 U.S.C.A. § 6812 (5).¹ Under Part A of Title III of ESSA (English Language Acquisition and Language Enhancement), an eligible entity must use the funds granted to, among other things,

“provide and implement . . . effective activities and strategies that enhance or supplement language instruction educational programs for English learners, which (A) shall include parent, family, and community engagement activities; and (B) may include strategies that serve to coordinate and align related programs.”

20 U.S.C.A. § 6825 (c). Further, subsection (d) of this code section expands upon this grant of authority by providing a list of authorized activities. These activities include “community participation programs, family literacy services, and parent and family outreach and training activities to English learners and their families (a) to improve the English language skills of English learners; and (b) to assist parents and families in helping their children to improve their academic achievement and becoming active participants in the education of their children.” 20 U.S.C.A. § 6825 (d)(6).

According to guidance issued by the Department of Education (“DoE”), “community participation programs, family literacy services, and parent and family outreach and training activities” may include “English as a Second Language courses for parents and families of [English learners] in order to assist parents and families in helping their children to improve their academic achievement, and to help parents and families to become active participants in the education of their children.”² Further, the DoE has affirmatively stated that, “[t]o determine whether or not a student meets the Title III definition of an immigrant child and youth, a school and/or district should not ask about a student, parent, guardian, or sponsor’s citizenship or immigration status or date of entry into the United States. Such information has no bearing on whether or not the student meets the definition of immigrant child or youth for Title III purposes, and may create a chilling effect that could discourage students and families from enrolling in school.”³

The International Newcomer Center (“INC”), operated under the control of GCBE, serves non-English speaking students enrolled in the Gwinnett County School District and their families. As a recipient of Title III funds under ESSA, INC offers English language classes and technological training that provides basic computer and electronic communication skills to

¹ Under ESSA, “English learners” are also known as limited English proficient students.

² See Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), p. 28, available at <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiiguidenglishlearners92016.pdf>

³ FACT SHEET II: Additional Questions & Answers on Enrolling New Immigrant Students, available at <https://www2.ed.gov/policy/rights/guid/unaccompanied-children-2.pdf>

parents, guardians, and/or grandparents of students enrolled in Gwinnett County schools. In full recognition of the vital role parents and families play in a child's educational success, Title III authorizes these programs for adults- not for their own personal, career or educational benefit - but for the betterment of their child's education. The students are benefited in the following ways: (a) having fluent English speakers in the household advances the language skills of the student; (b) developing English skills positively affects the student's academic achievement and (c) parents and families who are fluent in English and computer proficient can meaningfully participate in the student's educational process, which in turn improves the student's academic success. For these reasons, the GCBE programs comport with the program requirements under Title III. See 20 U.S.C.A. § 6825 (d).

However, O.C.G.A. § 50-36-1's verification requirements, if construed to apply to the GCBE programs, are in direct conflict with Title III and its objectives. If these requirements are applied to the GCBE programs, they would effectively deprive some immigrant students of equal access to education. In fact, if undocumented immigrants are excluded from the GCBE programs, O.C.G.A. § 50-36-1(b) would operate to deny Title III access to the very students whose education Title III was created to improve. While the verification requirement is intended to regulate the granting of "adult education" benefits to undocumented immigrants, in effect it would prevent access to these federally-authorized educational programs for a significant portion of immigrant students. Thus, applying the verification requirements in O.C.G.A. § 50-36-1 would constitute an unlawful restraint on a student's right to education and obstruct the implementation of Title III.

ii. **Because the GCBE programs do not constitute "adult education" under Georgia law, they are not subject to the verification requirements under O.C.G.A. § 50-36-1(b).**

O.C.G.A. § 50-36-1 (b) provides that "every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits." A public benefit is defined, in this code-section, as "a federal, a state, or local benefit." O.C.G.A. § 50-36-1 (a)(4). Specifically, "adult education" is listed as one of the twenty-seven (27) examples of public benefits enumerated in the statute. O.C.G.A. § 50-36-1 (a)(4)(A). Absent any applicable exception or exemption, a provider of "adult education" must verify the lawful presence of the applicant pursuant to O.C.G.A. § 50-36-1 (f).

In Georgia, adult education programs are administered by the State Board of the Technical College System of Georgia ("TCSG"), "the sole state agency to receive federal funds allotted to Georgia under acts of Congress appropriating federal funds for adult literacy education programs." O.C.G.A. § 20-4-17 (b). One of the duties of TCSG is to provide for a

“comprehensive program of literacy, career, occupational, and technical education for adults and out-of-school youths . . . by providing high quality postsecondary technical and adult literacy education programs, services, and activities which are easily accessible by all segments of the adult population who need and can benefit from [them].” O.C.G.A. § 20-4-11. Further, “all decisions regarding the delivery of adult literacy and postsecondary technical education programs and services to business, industry, and individuals who are 16 years of age or older and who have completed or left the public schools . . . shall be made by [TCSG]. Commensurate with this authority, *the system shall exercise state level management and operational control over adult literacy education programs, postsecondary technical schools, and adult vocational centers.*” O.C.G.A. § 20-4-18. (emphasis added).

Because TCSG manages and operates the State’s adult education programs exclusively, it alone occupies, manages, and designs the “adult education” landscape in Georgia. Since Georgia law explicitly states that “adult education” programs are the *sole* responsibility of TCSG, “adult education” under O.C.G.A. § 50-36-1 can only refer to those programs administered by TCSG.⁴ Accordingly, the GCBE programs cannot be considered “adult education” benefits under Georgia law as they do not receive funding from TCSG, do not derive any authority from TCSG, do not provide services that are intended, in any way, to compete with, supplant or supplement those offered by TCSG and are not otherwise affiliated with TCSG in any way. Most importantly, the Title III status of the GCBE programs effectively preclude their categorization as “adult education” under TCSG. As authorized under Title III, the GCBE programs simply offer English language and technology classes to the family members of English learners for the purpose of improving the language skills and academic achievement of those students. Unlike the programs and services under TCSG that confer degrees or certificates or provide career or other specialized training to adults, the GCBE programs are designed to benefit the elementary and secondary school students – not the adult participant. Thus, because GCBE programs are not conducted under the auspices of TCSG, they do not constitute “adult education” benefits and are immune from the verification requirements in O.C.G.A. § 50-36-1.

iii. **The verification requirements in O.C.G.A. § 50-36-1(b), if applied here, would offend the Supreme Court ruling granting the right to public education to all children, including undocumented immigrants.**

In a landmark case, the Supreme Court ruled that all children, without regard to their citizenship or immigration status, are entitled to a public education. Plyler v. Doe, 457 U.S. 202

⁴ Wells v. W. Georgia Tech. Coll., 1:11-CV-3422-JEC, 2012 WL 3150819, at *2 (N.D. Ga. Aug. 2, 2012)(finding that because TCSG “exercises ‘management and operational control’ over all Georgia vocational centers, TCSG is the only legal entity that is potentially subject to liability” for claims asserted against a Georgia technical college).

(1982). Specifically, the Court held that a Texas statute that withheld funds from school districts for the education of undocumented school-age immigrants; authorized school districts to deny enrollment to such children; and permitted school districts to collect tuition from such children violated the Equal Protection Clause. *Id.* Highlighting the significance of education, the Court wrote, “[t]he American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance.” *Id.* at 221. Further, “education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all [and] has a fundamental role in maintaining the fabric of our society.” *Id.* Importantly, the Court opined:

“ . . . [D]enial 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 . . . [E]ducation prepares individuals to be self-reliant and self-sufficient participants in society. *Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life.* The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.”

Id. at 221–22. (internal quotations omitted)(emphasis added). Another consistent sentiment expressed in the Court’s decision is the insistence that children should not bear the burden or stigma associated with the unlawful actions of their parents. “[I]mposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual—as well as unjust—way of deterring the parent.” *Id.* at 220.

Courts within the Eleventh Circuit have upheld and extended the right to educational access for undocumented immigrants articulated in *Plyler*. In *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1249 (11th Cir. 2012), plaintiffs challenged various provisions of an Alabama statute, including one that authorized schools to require parents to confirm their child’s immigrant status. Failure to provide this information was deemed an admission of unlawful presence. Like the tuition requirement in *Plyler*, the forced disclosure of the student’s immigration status in this case imposed an unfair obstacle to the undocumented child’s access to public education. *Id.* at 1247. The court, examining the provision under a heightened scrutiny, found that this provision violated the Equal Protection Clause. “The special impact challenged here is not an inability to show a birth certificate but the state-mandated

disclosure of the immigration status of the child (and possibly his or her parents) upon enrollment.” Id. at 1246. The court also noted that fear of this disclosure “could lead to criminal prosecution, harassment, and deportation” and have a deterring effect on the school enrollment of immigrant students. Id. Also, a recent district court decision applied a heightened scrutiny standard when holding that Florida regulations requiring “additional criteria” for determining residency when a student’s parents were non-U.S. citizens also violated the Equal Protection Clause. Ruiz v. Robinson, 892 F. Supp. 2d 1321 (S.D. Fla. 2012). In this case, college-aged students whose parents were undocumented immigrants were being treated differently from other students based solely on the immigration status of their parents, regardless of the students’ own lawful presence. That court ruled that this regulation, “den[ied] a benefit and create[d] unique obstacles to attain public . . . education for . . . children who would otherwise qualify for [the benefit] but for their parents’ undocumented immigration status. Ruiz, at 1329-30.

In the instant matter, the verification requirement in O.C.G.A. § 50-36-1, should it be construed to apply to the GCBE programs, is analogous to the tuition requirement in Plyler, the forced disclosures of immigrant status in Hispanic Interest Coal. of Alabama, and the application of the residency regulation in Ruiz as it serves as an impermissible barrier to the education of immigrant students. As it stands, the GCBE programs assist non-English speakers and/or those with technological deficiencies in communicating with teachers and school staff; staying abreast of important scholastic and academic school events; and accessing and reviewing their child’s grades and academic progress. Excluding parents and family members from the GCBE programs impinges directly upon the student’s right to education as the ability of parents and family members to engage and advise the student, which is absolutely dependent on their ability to communicate effectively with school staff, affects the student’s educational progress.⁵ In this way, the verification requirement impedes the student’s right to access education as granted in Plyler. Further, this verification requirement directly punishes the children of illegal immigrants for the actions of their parents, creating two classes of immigrant students - those with parents who are U.S. citizens or lawful immigrants and those whose parents are not. Children of undocumented immigrants are robbed of an equal opportunity to receive an education when their parents are denied access to resources enabling them to be informed and meaningfully engaged

⁵As Title III illuminates the importance of parental involvement, the Georgia legislature has also repeatedly acknowledged the essential role that parents play in the education of their children. See O.C.G.A. § 20-2-85 (“recogniz[ing] the need to improve communication and participation of parents and the community in the management and operation of local schools”); O.C.G.A. § 20-2-2111 (“parents are best equipped to make decisions for their children, including the educational settings that will best serve the interests and educational needs of their children”); O.C.G.A. § 20-2-720 (acknowledging that parents have the right to inspect and review their child’s educational records as they are entitled to engage in the learning process); O.C.G.A. § 20-2-661 (recognizing that student data is a vital source for parents, allowing them to make informed choices about educational programming and gauge academic progress); O.C.G.A. § 20-2-735 (requiring a parental involvement process for parents of students to improve and enhance student behavior and academic performance).

partners in their child's education. This denial will have lingering, life-long effects for the affected students. Also, the verification requirement is likely to be a deterrent as it would force parents to reveal their immigrant status, and by extension that of their child, when they are denied access to the GCBE programs for their inability to verify their lawful presence. In accordance with the Supreme Court decision in Plyler, the blameless children of undocumented immigrants should not be denied educational access or opportunities due to the immigration status of their parents.

For all of the reasons articulated above, the Immigration Enforcement Review Board should find that the Gwinnett County Board of Education is not in violation of O.C.G.A. § 50-36-1. Should you require anything further, please contact the undersigned.

Sincerely,

**THOMPSON, SWEENEY,
KINSINGER & PEREIRA PC**



Victoria Sweeney

cc: Jorge Gomez