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March 7, 2017

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

Re: Hall County School District

Dear Mr. Vinson:

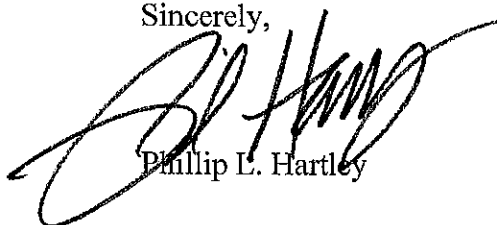
This firm represents the Hall County School District and, in that capacity, we are responding to a letter dated February 23, 2017 from the Director of Administration of the Department of Audits and Accounts referencing a complaint filed with the Immigration Enforcement Review Board.

The School District believes that it has fully and completely complied with O.C.G.A. § 50-36-1. Specifically with regard to the apparent allegations, the School District does not offer adult education programs. The program that appears to be referenced by the complainant involves Title III of the Elementary and Secondary Education Act, which provides funds to the State and through the State to public school districts. This program serves qualifying students and, in doing so, attempts to facilitate parental involvement and provide assistance to parents so they can assist in their children's education. In that way, it is similar to many programs that school districts offer to get parents more involved in the education of their children.

Rule 160-5-.1-28(2)(b)(VII) of the State Board of Education, a copy of which is attached (see page 5), specifically prohibits any inquiry into the legal status of students or their parents as a condition for enrollment in the public education program of the state. Just recently, school districts received further explanation from Cori Alston, the Program Manager, ESOL and Title III Coordinator at the State Department of Education, together with a letter from the United States Department of Education. As is clear from these documents, both state regulation and federal law prohibit the School District from inquiring into legal status or basing any decision regarding enrollment in a K-12 program on legal status. Of course, the provision of K-12 public education to the students of the state is not one of the services listed or specified in O.C.G.A. § 50-36-1.

To the extent there are issues with regard to the application of the state law to this federal program, the inquiry should be directed to either the state or federal departments of education. As to this specific complaint, hopefully this provides all the information that you need, but do not hesitate to let us know if additional information is sought.

Sincerely,



Phillip L. Hartley

PLH:drj

Enclosures

c: Ms. Carol G. Schwinne
Mr. Will Schofield

160-5-1-.28 STUDENT ENROLLMENT AND WITHDRAWAL

(1) DEFINITIONS.

(a) **Active Duty** – the full-time duty status in the active uniformed services of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.

(b) **Attend** – a student’s physical or virtual presence in the educational programs for which he or she is enrolled.

(c) **Case Management Consultation (CMC)** – a consultation by a school social worker or case manager in which a process is used to discover whether any transition problems exist and whether any services are necessary for a child placed by the Department of Human Services (DHS) or Department of Juvenile Justice (DJJ).

(d) **Child of Military Families** – a child enrolled in kindergarten through grade 12, in the household of an active duty military member.

(e) **Department of Behavioral Health and Developmental Disabilities (DBHDD)** – an agency which provides specified services for children who have been admitted or placed according to an individualized treatment or service plan directed by DBHDD.

(f) **Department of Human Services (DHS)** – an agency which provides specified services and placement for children who have been remanded to the physical or legal custody of DHS either temporarily or permanently by a court or by voluntary agreement, or if the child has been admitted or placed according to an individualized treatment or service plan of DHS.

(g) **Department of Juvenile Justice (DJJ)** – the agency which provides supervision, detention and a wide range of treatment and educational services for youths referred to DJJ by the Juvenile Courts, and provides assistance or delinquency prevention services for at-risk youths through collaborative efforts with other public, private, and community entities.

(h) **Education For Homeless Children And Youths** – Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*) that requires each state to ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education as provided to other children and youth.

(i) **Emancipated Minor** – an individual under the age of eighteen who is no longer under the control or authority of his or her parents or guardians by operation of law or

pursuant to a petition filed by the minor with the juvenile court and granted by a judge in juvenile court after the judge determines emancipation is in the best interest of the minor as provided in O.C.G.A. § 15-11-202.

(j) **Enroll** – the registration of a student in the local education agency (LEA) of residence. A parent, guardian, other person residing within this state having control or charge of any child or children, or the student (in the case of an emancipated minor) provides the LEA with the appropriate documentation. Once enrolled, the child shall be eligible to attend the assigned school.

(k) **Georgia Department of Education (GaDOE)** – the state agency charged with the fiscal and administrative management of certain aspects of K-12 public education, including the implementation of federal and state mandates subject to supervision and oversight by the State Board of Education.

(l) **Governor’s Office of Student Achievement (GOSA)** – the state agency mandated by O.C.G.A. § 20-14-26 to create a uniform performance-based accountability system for K-12 public schools that incorporates both state and federal mandates, including student and school performance standards, and to audit and inspect or cause to be audited and inspected K-12 public schools, and LEAs for the purpose of verification, research, analysis, reporting or for other purposes related to the performance of its powers and duties.

(m) **Grandparent** – the parent and/or step-parent of a minor child’s father or mother. This definition remains the same upon the death and/or the termination of parental rights of the birth parent.

(n) **Home Study** – a program that allows parents or guardians to teach their children at home as provided in O.C.G.A. § 20-2-690 (c).

(o) **Homeless Child or Youth** – individuals who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

1. Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
3. Living in emergency or transitional shelters; or
4. Abandoned in hospitals.

5. The following children are included in the definition; however, this list is not exhaustive: children who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping

accommodation for human beings; children who are living in cars, parks, public spaces, abandoned building, substandard housing, bus or train stations, or similar settings; and migratory children who qualify as homeless because they are living in circumstances described above. (McKinney Vento Homeless Act 42 U.S.C. § 11431 *et seq.*)

(p) **Individualized Education Program (IEP)** – a written plan for each student with a disability that is developed, reviewed, and revised in accordance with Individuals with Disabilities Education Act, 20 U.S.C. § 1414(d).

(q) **Individuals with Disabilities Education Act (IDEA)** – the federal law, codified at 20 U.S.C. § 1400, *et seq.*, enacted to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; to ensure that the rights of students with disabilities and their parents are protected; to assist states, localities, educational service agencies, and federal agencies to provide for the education of students with disabilities; and to assess and ensure the effectiveness of efforts to educate students with disabilities.

(r) **Local Education Agency (LEA)** – the public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through Grade 12 public education institutions.

(s) **“in loco parentis”** – to assume the duties and responsibilities of a parent without a formal legal process.

(t) **Other Person** – an adult at least 18 years of age or an emancipated minor at least sixteen years of age residing within the boundaries of a Georgia LEA who is not the parent or guardian of a child or children but stands *in loco parentis*.

(u) **Residency** – occupying a dwelling located within the boundaries of an LEA where the student lives with a parent, guardian, or other person, unless the student is an emancipated minor.

(v) **State Board of Education (SBOE)** – the constitutional authority which defines education policy for public K-12 education agencies in Georgia.

(w) **Withdraw** – the removal of a student from the official roll of a Georgia public school.

(x) **Withdrawal Code** – an official code which signifies the reason a student has withdrawn from a Georgia public school as defined in the guidelines and timelines published by the GaDOE.

(2) REQUIREMENTS.

(a) Eligibility for Enrollment.

1. Other than students specifically exempted by rule or by law, the following individuals shall be eligible for enrollment in publically-funded programs in Georgia public schools:

(i) Students who have attained the age of five by September 1 to enroll in the appropriate general education programs unless they attain the age of 21 by September 1 or they have received a high school diploma or the equivalent. Students that have dropped out of school for one quarter or more are eligible to enroll in the appropriate general education programs unless they attain the age of 20 by September 1.

(ii) Students with Individualized Education Programs (IEPs) developed under the Individuals with Disabilities Education Act (IDEA) may attend public school through the age of 21 or until they receive a regular high school diploma.

(iii) Students who were legal residents of one or more other states or countries for a period of two years immediately prior to moving to Georgia and were legally enrolled in a public kindergarten or first grade accredited by a state or regional association or the equivalent thereof, are eligible for enrollment in the appropriate education program if the child attains the age of five for kindergarten or six for first grade by December 31 and the child is otherwise eligible for enrollment as prescribed in O.C.G.A. § 20-2-150.

(b) Persons That May Enroll Eligible Students.

1. Under the provisions stated in O.C.G.A. § 20-2-690.1, a parent, guardian, grandparent, or other person has the authority to enroll a student in a publicly-funded Georgia school.

(i) Unless otherwise provided by law or rule, if the person enrolling a student is not the parent and does not hold legal guardianship, the LEA may adopt a policy requiring that the person enrolling the student complete a Non-Parental Affidavit of Residence.

(l) A homeless child, as defined in the McKinney-Vento Homeless Act 42 U.S.C. § 11431 *et seq.*, shall be enrolled immediately with full participation in all school activities whether or not appropriate documentation can be provided at the time of enrollment.

I. Upon determining that a student is homeless, as defined by the McKinney-Vento Homeless Assistance Act, the child must be allowed to either remain in the district in which he or she was enrolled prior to becoming homeless or enroll in the district where he or she is now located.

(II) An LEA shall immediately enroll a student in the physical or legal custody of the Department of Human Services (DHS) or the Department of Juvenile Justice (DJJ) or a student placed by the DHS, DBHDD, or DJJ in a residential facility located within the LEA's jurisdiction, pursuant to O.C.G.A. § 20-2-133(b).

(IV) Upon notification by the DJJ that a student will be enrolling in an LEA, the LEA shall enroll the student in his or her home school, as opposed to an alternative educational setting unless the case management consultation team concludes that the best placement for the child would be the alternative setting. Any placement made pursuant to an individualized education program team shall take precedence.

(V) A grandparent with a properly executed power of attorney for the care of a minor child may enroll their grandchild, without court approval, in the LEA in which the grandparent resides if the specific conditions set forth in the "Power of Attorney for the Care of a Minor Child Act," O.C.G.A § 19-9-120 through O.C.G.A § 19-9-129 are met.

I. No person or school official who acts in good faith reliance on a power of attorney for the care of a minor child shall be subject to criminal or civil liability or professional disciplinary action for such reliance.

II. Except where limited by federal law or the executed power of attorney, the grandparent empowered to enroll the child shall have the same rights, duties, and responsibilities that would otherwise be exercised by the parent pursuant to the laws of this state.

(VI) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

I. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis whose residence is other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

(VII) LEAs shall accept immigrants/non-visa-holders who meet age and residency requirements and shall not inquire about their legal status in accordance with U.S. Supreme Court Decision in Plyler v. Doe, 457 U.S. 202 (1982).

I. LEAs are not responsible for making determinations regarding immigration and visa status. Rather, the U.S. Department of State (Office of Visa Services) and the Department of Homeland Security (U.S. Citizenship and Immigration Services) are responsible for making such determinations.

II. LEAs may accept non-immigrant, foreign students on F-1 visas in accordance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Section 625 of Public Law 104-208).

III. LEAs may accept non-immigrant, foreign exchange students on J-1 visas in accordance with the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87-256) as amended, 22 U.S.C. 2451, et. seq. (1988).

IV. LEAs shall accept non-immigrant foreign students on derivative visas where they are the qualifying child of a non-immigrant student or exchange visitor (i.e. F-2, M-2, J-2).

V. LEAs shall accept non-immigrant, foreign students on B-1/B-2 visas and are not responsible for ascertaining whether or not seeking enrollment in school will violate the terms of the visa.

(c) Provisional Enrollment.

1. Other than students specifically exempted by rule or by law, a student shall be enrolled on a provisional basis and allowed to attend an LEA for 30 calendar days while awaiting evidence of age, residence, or other local requirements. The provisional enrollment period may be extended for extenuating circumstances.

(i) If evidence is not provided within this period, the LEA superintendent or designee shall mark the student withdrawn at the end of the thirtieth day.

(ii) The LEA superintendent or designee shall notify the registering parent, guardian, grandparent, or other person at least 10 calendar days prior to the withdrawal of the student.

(I) The registering parent, guardian, grandparent, or other person will be considered noncompliant and subject to all penalties as prescribed in O.C.G.A. § 20-2-690.1.

(II) The local school superintendent shall report violations to the appropriate authorities for adjudication.

2. O.C.G.A. § 20-2-150 (c) concerning compulsory attendance of students prior to their seventh birthday does not apply to provisional enrollment.

3. Students pre-registering in an LEA of residence shall not be eligible for provisional enrollment until the beginning of the attendance period of the school term for which the student is enrolling.

4. A student shall not be denied enrollment into an LEA if the student meets residency qualifications and otherwise would not be denied enrollment under O.C.G.A. § 20-2-751.1 and O.C.G.A. § 20-2-751.2 concerning student expulsion.

5. The LEA shall be required to provisionally enroll students pursuant to Section (2) (c)1 of this rule if their local policy places additional requirements on the other person when enrolling a student in their control or charge.

6. The provisions of O.C.G.A. § 20-2-670 regarding the transferal of discipline actions or felony convictions for students in grade 7 and above shall take precedence over any provisional enrollment.

(d) Enrollment Documentation.

1. Other than students specifically exempted by rule or by law, before admitting any individual to a public Georgia school or program, the superintendent or designee shall accept evidence in the order set forth below that shows the individuals date of birth:

(i) A certified copy of a birth certificate, certified hospital issued birth record or birth certificate;

(ii) A military ID;

(iii) A valid driver's license;

(iv) A passport;

(v) An adoption record;

(vi) A religious record signed by an authorized religious official;

(vii) An official school transcript; or

(viii) If none of these evidences can be produced, an affidavit of age sworn to by the parent, guardian, grandparent, or other person accompanied by a certificate of age signed by a licensed practicing physician, which certificate states that the physician has examined the child and believes that the age as stated in the affidavit is substantially correct.

2. During the enrollment process, LEAs shall adhere to:

(i) The provisions of O.C.G.A. § 20-2-771 concerning the immunization of students, which includes an exception for religious grounds; and,

(ii) The provisions of O.C.G.A. § 20-2-770 concerning nutritional screening and eye, ear, and dental examinations of students.

3. Upon presentation of one of these evidences required in paragraph (2) (d) 1, a photocopy of the document shall be placed in the student's record and the original

document presented shall be returned to the parent, guardian, grandparent, or other person.

4. The LEA shall ensure that the employee or other designated individual responsible for care of homeless students shall assist the homeless student in acquiring the necessary records for enrollment. Proof of residence is not required.

5. The LEA may require a grandparent empowered to enroll the child to produce the same documentation a parent would produce to enroll the child.

6. The following provisions apply to a child or children of military families.

(i) In the event that official education records cannot be released to the parents or legal guardian for the purpose of transfer, an LEA shall accept a complete set of unofficial educational records prepared by the sending school and furnished to the parent or legal guardian.

(I) Upon receipt of such unofficial education records, the LEA shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records.

(II) Simultaneously with the enrollment and conditional placement of the student, the LEA shall request the student's official education records from the school in the sending state.

(ii) Students in the household of an active duty military member shall be allowed to continue their enrollment at grade level in the local school system commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age.

(I) A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age.

(II) A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

(iii) The LEA shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in similar programs based on current educational assessments conducted at the school in the sending state or participation or placement in similar programs in the sending state. Such programs include, but are not limited to: gifted and talented programs, and English as a second language.

(I) Nothing in this section shall preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(iv) An LEA shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing *in loco parentis* who lives in a jurisdiction other than that of the custodial parent.

7. Pursuant to O.C.G.A. § 20-2-150, before the final enrollment of a student to a publicly-funded Georgia school is complete, a parent, guardian, or other person shall provide a copy of the enrolling student's social security number to the proper school authorities or shall complete and sign a form stating the individual does not wish to provide the social security number.

8. A student shall be identified in the local Student Information System (SIS) and in the Georgia Department of Education official data collection and reporting systems by the student's legal name as it appears on the documentation submitted for age verification as delineated in paragraph (2)(d)1, or in a court order changing the student's name.

9. Once a student has successfully enrolled in any publicly-funded Georgia school, provided that one of the evidences required in paragraph (2) (d) 1 has been provided and recorded in the Georgia Testing Identifier (GTID) as set forth in SBOE Rule 160-5-1-.07 and any associated guidelines, further proof of age under this provision is deemed unnecessary.

(e) Withdrawal.

1. A student may be withdrawn by a parent, guardian, grandparent, or other person as provided in (2)(b)1 of this rule.

2. When a parent, guardian, grandparent, or other person as provided in (2)(b)1 of this rule withdraws a student according to the LEA policies and procedures, with documentation of proof of enrollment as provided in (2)(e)1 above, the student's withdrawal date shall be recorded as the last day of student attendance.

(i) If a student is under suspension or expulsion, on the date of withdrawal, the new school of enrollment shall be notified of the terms of the suspension or expulsion.

(ii) If a student is an unemancipated minor who is older than the age of mandatory attendance as required in O.C.G.A. § 20-2-690.1(a) and who has not completed all requirements for a high school diploma, wishes to withdraw from school, the student must have the written permission of his or her parent or legal guardian prior to withdrawing and a conference must be held with the school principal or designee pursuant to O.C.G.A. § 20-2-690.1(e).

160-5-1-.28 (Continued)

3. When a parent, guardian, grandparent, or other person as provided in (2)(b)1 of this rule does not withdraw a student from a current school according to LEA policies, the LEA shall withdraw the student.

(i) With proof of enrollment in a different school, other LEA, private school, or home study program, the date of withdrawal for a student shall be the last school day of student attendance.

(ii) With no proof of enrollment in another school, other LEA, private school, or home study program, a student shall be withdrawn from a school after 10 consecutive unexcused absences or when the LEA provides documentation validating the student no longer resides in the school's attendance zone.

(I) The student withdrawal date shall be the last day of attendance or the day the LEA obtains documentation validating the student no longer resides in the school's attendance zone.

(II) In the absence of the documented proof as described in (2)(e)8 of this rule, the withdrawal code shall indicate that the student was removed for lack of attendance.

(III) Each superintendent or the superintendent's designee shall notify the parent, guardian, or other person if the LEA plans to withdraw such student. Such notification shall be by certified mail, return receipt requested.

4. A student who is not in attendance on the first day of school but expected based on prior year enrollment, shall be withdrawn as a no-show student and shall not be included in any enrollment or attendance counts.

(i) Students not in attendance on the first day of school but expected based on prior year enrollment shall not accrue absences until the student is physically present and attending.

(ii) The reason for students withdrawn as a "no-show" shall be recorded in the schools official records as unknown, unless the LEA has proof that the student has enrolled in a different school, other LEA, private school, or home study program as set forth in (2)(e)8 of this rule.

5. A student shall be withdrawn from a school on the day the school or LEA receives documentation validating the student no longer resides in the school's attendance zone unless one of the following exceptions occur:

(i) LEA policy allows student to remain enrolled to complete the current school year.

(ii) Student is allowed to remain enrolled based on O.C.G.A. § 20-2-293 or O.C.G.A. §20-2-294.

6. A student shall not be withdrawn due to excused absences defined in SBOE Rule 160-5-1-.10 and O.C.G.A. § 20-2-690.1(a).

7. A student shall not be withdrawn while receiving Hospital/Homebound services.

8. Pursuant to the provisions in 34 Code of Federal Regulations (C.F.R.) Part 200, a school or LEA shall only use a withdrawal code which denotes that a student transferred if the LEA has proof that the student enrolled in another school, other LEA, private school or home study program.

(i) Documentation must be in writing so that the transfer can be verified through audits or monitoring and maintained in the permanent student record.

(ii) It is the responsibility of the principal to ensure that all student withdrawal information is complete and accurate.

9. The following are acceptable forms of documentation when using withdrawal codes that are associated with students who transferred:

(i) For students transferring to a school within the same LEA or another Georgia LEA, proof shall include the request for records from the receiving school, evidence of a transfer that is recorded in the State's student data collection system, or a letter from an official in the receiving school acknowledging the student's enrollment.

(ii) For students transferring out of state or to a private school, proof shall include the request for records from the receiving school, or a letter from an official in the receiving school acknowledging the student's enrollment.

(iii) For students transferring to a home study program, proof shall include a document signed by the parent, guardian, or other person who meets the requirements of the "Power of Attorney for the Care of a Minor Child Act", which declares their decision to educate the student in a home study program.

(iv) For students transferring to another country, a school or school system must have written confirmation that a student has emigrated to another country (34 C.F.R. §200.19(b)(1)(ii)(B)), but need not obtain official written documentation. If a parent informs a school administrator that the family is leaving the country, the school administrator may document this conversation in writing and include it in the student's file.

10. LEAs must be able to document the reasons to support student withdrawal as outlined in this rule and SBOE 160-5-1-.07 Student Data Collection and associated guidelines and resources.

11. GOSA may conduct in-depth audits at its discretion, or at the request of the Georgia Department of Education to ensure that LEA data, student records documentation, procedures, and processes are in compliance with this rule.

(i) LEAs found to be non-compliant with these provisions will be reported to the State Board of Education.

(ii) If an audit conducted by GOSA documents findings of noncompliance which affected the calculation of the graduation rate, the GaDOE may adjust the cohort graduation rate for such school and LEA.

Authority O.C.G.A. § 15-11-202, 19-9-120 through 19-9-129, 20-2-133, 20-2-150, 20-2-293, 20-2-293, 20-2-294, 20-2-670, 20-2-690.1, 20-2-751.1, 20-2-751.2, 20-2-770, 20-2-771, 20-2-2130 through 20-2-2170, 20-14-25, and 20-14-26.

Adopted: December 8, 2016

Effective: December 28, 2016

From: Cori Alston <CAlston@doe.k12.ga.us>

Date: March 3, 2017 at 7:41:28 AM EST

To: Tammie Smith <tsmith@doe.k12.ga.us>, Dely Roberts <droboterts@doe.k12.ga.us>, Margaret Baker <mbaker@doe.k12.ga.us>, "Jacqueline Ellis" <jellis@doe.k12.ga.us>

Cc: Cori Alston <CAlston@doe.k12.ga.us>

Subject: EL parent/family support services, legal considerations

Dear Colleagues:

It has recently come to my attention that a number of districts have been receiving inquiries regarding the language and literacy support services that they may be offering to their students' non-English speaking parents.

I would like to take this opportunity to remind you of your district's obligation to adhere to federal statutes, in particular Titles IV and VI of the Civil Rights Act of 1964, that prohibit practices deemed discriminatory to persons based on their race, color or national origin. To provide further detail on these requirements, I will attach the 2011 Dear Colleague letter co-written by the U.S. Department of Justice and U.S. Department of Education.

In addition, under ESEA Title III, Sec. 3115 "SUBGRANTS TO ELIGIBLE ENTITIES," subsection (d)(6) specifically indicates that LEA recipients of Title III funds may provide "community participation programs, family literacy services and parent and family outreach and training activities to English learners and their families...".

Responses to public inquiries regarding these family support services or the federal and state laws that govern their provision should be directed to your local school district attorney.

With kind regards,

Cori

Cori Alston
Program Manager, ESOL & Title III Unit
Georgia Department of Education
1854 Twin Towers East
205 Jesse Hill Jr. Drive
Atlanta, GA 30533
(404) 656-2067

"Educating Georgia's Future"



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

May 6, 2011

Dear Colleague:

Under Federal law, State and local educational agencies (hereinafter “districts”) are required to provide all children with equal access to public education at the elementary and secondary level. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. *See* 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

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 basic 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.” *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.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents

or guardians. Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).¹ For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district.

A school district may require a birth certificate to ensure that a student falls within district-mandated minimum and maximum age requirements; however, a district may not bar a student from enrolling in its schools based on a foreign birth certificate. Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. *See* 5 U.S.C. §552a (note).² If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish to review the documents your district requires for school enrollment to ensure that the requested documents do not have a chilling effect on a student's enrollment in school. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the

¹ Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child's parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(i).

² Federal law provides for certain limited exceptions to this requirement. *See* Pub. L. 93-579 § 7(a)(2)(B).

enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

Please contact us if you have any questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, or the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov. You may also visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the OCR enforcement office that serves your area. For general information about equal access to public education, please visit our websites at <http://www.justice.gov/crt/edo> and <http://www2.ed.gov/about/offices/list/ocr/index.html>.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Charles P. Rose
General Counsel
U.S. Department of Education

/s/

Thomas E. Perez
Assistant Attorney General
Civil Rights Division
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