

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU**

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IN THE MATTER OF THE INVESTIGATION OF  
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL  
OF THE STATE OF NEW YORK,

**ASSURANCE OF  
DISCONTINUANCE**

*No. 15-036*

OF

PENFIELD CENTRAL SCHOOL DISTRICT

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**ASSURANCE OF DISCONTINUANCE**

In November 2014, the Office of the Attorney General of the State of New York (“OAG”) and the New York State Education Department (“SED”) began to investigate the Penfield Central School District (the “District”). The investigation sought to determine whether the District failed to fulfill its legal obligations concerning the provision of equal educational opportunities to students regardless of immigration status. Specifically, the investigation sought to determine whether the District’s policies, procedures and practices for enrolling and registering students discriminated against students on the basis of immigration status.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG and SED in connection with their investigation of the District and the relief agreed to by the OAG and the District (“the Parties”).

**I.**  
**DEFINITIONS**

1. As used throughout this Assurance, the terms set forth below shall have the following meanings.
  - a. “Assurance” means this Assurance of Discontinuance.
  - b. The “District” means the Penfield Central School District and its board of education, trustees, school authorities, school officers, school administrators, superintendents, principals, employees, agents, representatives, or other persons acting on its behalf.
  - c. “Effective Date” means the date that this Assurance is signed by an authorized representative of the OAG.
  - d. “Employee” means any person carried on the payroll of the District, and includes salaried and hourly employees, full-time or part-time employees, temporary, probationary or permanent employees, principals, teachers, teacher’s aides and assistants, registration personnel, and secretaries or other administrative personnel.
  - e. “OAG” means the New York State Office of the Attorney General.
  - f. “Parties” means the OAG and the District.
  - g. “SED” means the New York State Education Department.
  - h. Terms of construction:
    - i. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
    - ii. “All” means “any and all” and “any” means “any and all.”

- iii. “Concerning” means relating to, referring to, describing, evidencing, regarding, reflecting, or constituting.
- iv. “Day” refers to a calendar day, not a business day.
- v. “Including” means without limitation.
- vi. The singular of any word includes the plural; the plural of any word includes the singular.

## **II.** **FINDINGS**

### **The Penfield Central School District**

- 2. The Penfield Central School District has 4,488 enrolled students currently studying at the six District schools.<sup>1</sup> The District’s student population is 85% white, 5% Hispanic, 3% black and 3% multiracial.
- 3. The District is supervised by a Superintendent and an eight member Board of Education (the “Board”). The Superintendent serves as the chief executive officer of the Board and is responsible for implementing Board policies, as well as advising and recommending action to the Board. The Board has numerous responsibilities, including drafting policies for the operation of the local schools; employing a Superintendent of Schools; authorizing the appointment of teachers and all other staff members; determining goals for educational standards, and securing money for school operational needs and building programs; and authorizing specific expenditures.

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<sup>1</sup> When used throughout this Assurance, “student” means any person below the age of twenty-one (21) currently or formerly enrolled in a District school.

**The OAG/SED Joint Investigation**

4. In November 2014, the OAG and SED opened a joint investigation into the District to determine whether its enrollment and registration policies and materials impermissibly discriminated against students or prospective students on the basis of immigration status. The review involved consulting public information about such policies made available by school districts to prospective applicants for enrollment.
5. The investigation found that the District’s policies and materials were not consistent with *Plyler v. Doe*, which prohibits school districts from denying a resident student an equal educational opportunity on the basis of his or her immigration status. Specifically, the District’s “Student Information 2014-2015” enrollment form, the District asks students to check a box indicating whether they are United States citizens. This inquiry could potentially chill or discourage undocumented students from registering or enrolling in the District.

**III.**  
**PROSPECTIVE RELIEF**

WHEREAS, the District is subject to the Fourteenth Amendment to the U.S. Constitution, which the U.S. Supreme Court held, in *Plyler v. Doe*, prohibits school districts from denying a resident student an equal educational opportunity on the basis of his or her immigration status;

WHEREAS, under *Plyler*, the District must also ensure that its enrollment and registration procedures do not ask for information or documentation that has the purpose or result of chilling or discouraging enrollment by students on the basis of their immigration status;

WHEREAS, the investigation by the OAG and SED included the review of documents, including those made publically available by the District, concerning pertinent policies, procedures, and practices of the District;

WHEREAS, the District neither admits nor denies the findings of OAG and SED set forth in Paragraphs 2 - 5;

WHEREAS, the Parties share commitments to ensuring that every child seeking to enroll in the District's schools is treated equally regardless of immigration status, that the District's enrollment and registration policies are free of discrimination, and that no eligible child is impermissibly denied his or her right to a free education in the District's schools;

WHEREAS, the Parties are willing to accept the terms of this Assurance to resolve the investigation into the District; and

WHEREAS, the Parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the District and the OAG as follows:

**A.**  
**GENERAL INJUNCTION**

6. The District agrees to comply with the mandate of the Supreme Court's ruling in *Plyler v. Doe*; the obligations, terms, and conditions of the Fourteenth Amendment to the U.S. Constitution; and New York Education Law §3202 and any other applicable laws and regulations.

**B.**  
**ENROLLMENT AND REGISTRATION FORMS**

7. Within fourteen (14) days of the Effective Date of this Assurance, the District shall submit for OAG approval, revised enrollment or registration materials, including but not limited to any and all instructions, forms, packets, guides, and “Frequently Asked Questions” (“Enrollment Materials”). The Enrollment Materials must not include any inquiries into citizenship, immigration status, or any other inquiries that might chill or discourage student enrollment on the basis of immigration status.
8. Within seven (7) days of OAG approval of the Enrollment Materials, but no later than January 31, 2015, the District shall (a) distribute the Enrollment Materials to the Employees who handle enrollment and registration policies and protocols at each school in the District; and (b) make the Enrollment Materials publicly available, including posting them on the District’s website with an announcement explaining the change in the Enrollment Materials.
9. Any proposed modifications to the Enrollment Materials at any time during the term of this Assurance that (i) concern documents or information required of students in order to enroll, and (ii) pertain to a student’s or parent/guardian’s immigration status, shall be subject to OAG approval.

**C.**  
**ENROLLMENT AND REGISTRATION PROCEDURES**

10. No later than March 20, 2015, the District shall submit for OAG approval, written procedures for handling enrollment and registration determinations consistent with §100.2(y) of the Commissioner’s Regulations as amended effective December 16, 2014. The procedures shall include:

- a. A statement prohibiting inquiries into immigration status at the time of or as a condition of enrollment, except for limited and targeted post-enrollment inquiries, such as collecting necessary data for procuring funding under Title I of the Elementary and Secondary Education Act of 1965 (“ESEA”), Title III of ESEA, as amended by the No Child Left Behind Act of 2001, and N.Y. Educ. Law §3218 and §100.2(y) of the Commissioner’s Regulations as amended effective December 16, 2014;
- b. A statement permitting acceptance of multiple forms of proof of age as required by N.Y. Educ. Law §3218 and §100.2(y) of the Commissioner’s Regulations as amended effective December 16, 2014;
- c. A statement permitting acceptance of multiple forms of proof of residency as required by §100.2(y) of the Commissioner’s Regulations as amended effective December 16, 2014; and
- d. A statement that, in the event it denies enrollment of a student, the District will do so in accordance with §100.2(y) of the Commissioner’s Regulations as amended effective December 16, 2014, including the provision of written notice to the student or parent/guardian as set forth in that section.

**D.**  
**TRAINING**

11. No later than February 27, 2015, the District shall create a mandatory training program for all Employees involved in the enrollment and registration process (“Training Program”). The entity used to create the Training Program should have expertise and/or familiarity with enrollment and registration processes that comport with the law. Entities that can be retained for such training include, but are not limited to, third party non-

profits, district counsel, advisors, or other agencies. Both the entity the District uses to help develop its Training Program, and the Training Program itself are subject to OAG approval. The Training Program shall cover, but not be limited to, the following topics:

- a. The District's commitment to using policies that ensure provision of equal educational opportunities to District students regardless of immigration status;
- b. An explanation of the District's enrollment and registration process, including the District's obligations under the Fourteenth Amendment to the U.S. Constitution, N.Y. Educ. Law §§3202 and 3218, and §100.2(y) of the Commissioner's Regulations as amended effective December 16, 2014;
- c. A description of the prohibitions concerning inquiries into immigration status; identification of the limited and narrow circumstances under which such inquiries are permitted; discussion of the kinds of inquiries that can potentially chill enrollment; and
- d. An explanation of the right to file an appeal under N.Y. Educ. Law §310 if denied enrollment.

12. Within thirty (30) days of OAG approval of the Training Program, the District shall offer, and require all Employees involved in the enrollment and registration process to attend, a live presentation of the Training Program. The Training Program may be offered in connection with other District Employee training opportunities, but the District shall offer, and require all Employees involved in the enrollment and registration process to attend, a live presentation of the Training Program no less than once in each school year covered by this Assurance. The District shall maintain attendance sheets at each training presentation mandated by this Assurance.

**E.**  
**PUBLIC NOTICE**

13. Within seven (7) days of the Effective Date, but no later than January 31, 2015, the District shall make the Enrollment Materials publicly available, including posting on the District's website with an announcement explaining the change in the Enrollment Materials.
14. Within seven (7) days of the Effective Date, but no later than January 31, 2015, the District shall post to its website the statement annexed hereto as Exhibit 1.

**F.**  
**RECORDKEEPING AND REPORTING**

15. During the Assurance, the District shall collect and maintain records on every child denied enrollment in accordance with §100.2(y) of the Commissioner's Regulations. The records shall include:
  - a. The name and address of the child and his or her parents/guardians;
  - b. The application submitted on behalf of the child;
  - c. Notes of any evaluation made regarding the child concerning enrollment; and
  - d. Any record of an enrollment determination made with respect to the child.
16. The District shall provide notice to the OAG of decisions to deny enrollment to children who filed applications to enroll with the District, if any, in accordance with §100.2(y) of the Commissioner's Regulations. Such notice shall include the number of students denied enrollment and a general statement summarizing the basis for the denials. Notice regarding denials, if any, shall be provided twice per semester and can be provided in written or electronic format to the OAG in accordance with Paragraph 31.

17. The District shall retain, for the duration of the Assurance, all documents pertaining to this Assurance, whether in hard copy or electronic format, including but not limited to:
  - a. The registration and enrollment materials created pursuant to Paragraph 7;
  - b. The procedures created pursuant to Paragraph 10;
  - c. The attendance sheets maintained pursuant to Paragraph 12; and
  - d. The records created or maintained pursuant to Paragraphs 15 and 16.
18. The District shall prepare a report and provide it to the OAG at the close of each academic year, for at least three (3) academic years following the Effective Date. The reports shall contain the current versions of documents maintained under Paragraph 15(a)-(d).
19. The District shall ensure that any information, documents or data maintained and/or submitted to the OAG under the terms of this Assurance, shall also be made available for review by SED. This Assurance does not in any way impair or affect the right of the OAG to seek to obtain documents from the District.

**G.**

**SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS**

20. This Assurance shall expire on June 30, 2018.
21. The OAG has agreed to the terms of this Assurance based on, among other things, the representations that the District and its counsel made to the OAG and the OAG's own findings from the factual investigation as set forth in Findings outlined in Paragraphs 2 - 5 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

22. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the District in agreeing to this Assurance.
23. Upon execution by the Parties to this Assurance, the OAG shall discontinue the instant investigation except as otherwise related to the enforcement of the terms of this Assurance.
24. The District represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The District agrees not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects the District's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the District.
25. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.
26. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
27. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole

discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

28. If the Assurance is voided or breached, the District agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, the District expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the District, or from using in any way any statements, documents or other materials produced or provided by the District prior to or after the date of this Assurance.
29. No provision of this Assurance shall be interpreted to require the disclosure of student education records where prohibited by the Family Educational Rights and Privacy Act.
30. To the extent not already provided under this Assurance, the District agrees to, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
31. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

OAG  
Justin Deabler  
Assistant Attorney General  
Office of the Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
(212) 416-8250  
(212) 416-8074 (fax)  
Civil.Rights@ag.ny.gov (email)

The District  
Dr. Thomas Putnam  
Superintendent  
Penfield Central School District  
P.O. Box 900  
Penfield, NY 14526  
**Mailing Address:** P.O. Box 900, Penfield, NY 14526  
**Street Address:** 2590 Atlantic Ave., Rochester, NY 14625

Any changes in the person to whom communications should be specifically directed shall be made in advance of the change.

32. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the District shall make no representation to the contrary.
33. Should the OAG find a violation of any component of this Assurance, the District will be notified of the violation in writing, after which the District will have thirty (30) days to cure the violation and/or to object in writing to the OAG. Upon receipt of any objections, the OAG will make a final determination whether a material violation has occurred. If a court of competent jurisdiction later determines that the District has breached this Assurance, the District shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.
34. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.
35. Notwithstanding any provisions of this Assurance to the contrary, the OAG shall consider requests, when necessary, for reasonable extensions of time for the District to perform any obligations required herein.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto on January 14, 2015.

Dated: Penfield, New York  
January 14 2015

**PENFIELD CENTRAL SCHOOL DISTRICT**

By:   
Dr. Thomas Putnam  
Superintendent  
Penfield Central School District

CONSENTED TO:

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

Dated: New York, New York  
January 22, 2015

By:   
Kristen Clarke  
Bureau Chief

  
Justin Deabler  
Diane Lucas  
Ajay Saini  
Assistant Attorneys General  
Office of the New York State Attorney General  
120 Broadway  
New York, New York 10271  
Tel. (212) 416 8250  
Fax (212) 416 8074

# **EXHIBIT 1**

**Complaint Language for Posting to District Website (AOD, § 14)**

**COMPLAINTS**

**School districts may not request information that could chill or discourage students from enrolling with the district based on their own or their parents' immigration status. If you believe the District has made such inquiries during the enrollment process, or to file a civil rights complaint concerning a potentially discriminatory enrollment policy or practice, you may contact the:**

**Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271  
Telephone: (212) 416-8250 or (800) 771-7755  
Fax: (212) 416-8074  
[Civil.Rights@ag.ny.gov](mailto:Civil.Rights@ag.ny.gov)  
[www.oag.state.ny.us](http://www.oag.state.ny.us)**