



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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NEW YORK STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

JOHN B. KING, JR.
COMMISSIONER OF EDUCATION
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

October 23, 2014

VIA ELECTRONIC MAIL

Re: Compliance Review: District Enrollment Practices for
Unaccompanied Minors and Other Undocumented Youths

Dear Superintendent:

The Office of the New York State Attorney General (“OAG”) and the New York State Education Department (“SED”) are aware that many school districts across the state have experienced an influx of unaccompanied minors and other undocumented youths. Our offices have received and reviewed reports that school districts are refusing to enroll unaccompanied minors and undocumented youths if they, or their families or guardians, are unable to produce documents sufficiently demonstrating guardianship and/or residency in a district. These practices raise serious concerns that unaccompanied minors and undocumented youths are being denied their constitutional right to a free public education.

We are committed to ensuring that students have equal access to education regardless of their immigration status. As you know, New York law entitles each person over five and under twenty-one years of age, who has not received a high school diploma, to attend a public school in the district in which such person resides; furthermore, school districts must ensure that all resident students of compulsory school age attend upon full-time instruction.¹

As you are also no doubt aware, school districts may not deny resident students a free public education on the basis of their immigration status. Over three decades ago, the United States Supreme Court stated that allowing undocumented students to be denied an education would, in effect, “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 v. Doe*, 457 U.S. 202, 223 (1982).² Under established law, the

¹ See Educ. Law §§ 3202(1), 3205.

² See also 42 U.S.C. §§ 2000c-6, 2000-d; 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2) (Titles IV and VI of the Civil Rights Act of 1964 and associated federal regulations, prohibiting

undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to such student's entitlement to an elementary and secondary public education. Moreover, unaccompanied minors and undocumented youths may also be entitled to the protections of the federal McKinney-Vento Homeless Education Assistance Improvements Act, 42 U.S.C. § 11431, *et seq.* (“McKinney-Vento”), and implementing state law and regulations concerning the education of homeless children.

Together, these federal and state laws are driven by the dual purposes of ensuring student access to, and continuity within, a free public education system. They place clear requirements upon school districts, and the OAG and SED are committed to ensuring compliance with these requirements across districts in New York State. Specifically, at the time a new student seeks to enroll in a district, should the district have any question or concern about the adequacy of documentation presented on behalf of the student, the district *should immediately enroll the student*. After enrolling the student, the district will continue to have the opportunity to evaluate, and make a final determination as to, whether or not the student is (i) a district resident, or (ii) homeless and thereby entitled to services pursuant to McKinney-Vento and implementing state regulations.³

In light of information, data, and complaints reviewed and received by the OAG and SED, our agencies have initiated a compliance review of school district enrollment procedures for unaccompanied minors and other undocumented youths. This review will begin by focusing on Nassau, Suffolk, Rockland, and Westchester Counties, which are experiencing the largest influx of unaccompanied minors from Central and South America. The review will examine whether districts maintain policies and procedures that bar or impede students from enrolling in school on the basis of their citizenship or immigration status or that of their parents or guardians. The review will also examine whether districts are complying with state and federal registration and enrollment guidance, which emphasizes the need for flexibility in accepting and evaluating records – *e.g.*, of residency or age – presented on behalf of a student seeking to enroll in a district, and requires that homeless students must be afforded free public education as well.

To that end, we ask that the District provide copies of the following documents no later than **November 13, 2014**:

1. All documents included in the District’s registration or enrollment packets provided to students and/or guardians, whether provided on-line, by mail, or in person. Such documentation should include information regarding any documentation or record the District requires a student or guardian to submit in order to enroll the student in its schools. If such packets are available online, please also provide links to where they can be accessed on the District's website.

discrimination on the basis of, *inter alia*, race, color, or national origin by public elementary and secondary schools).

³ See 8 NYCRR §100.2(y) (“Determination of student residency”); 8 NYCRR §100.2(x)(7) (“Education of homeless children – School district responsibilities”).

2. Copies of all District enrollment and registration policies, practices, and procedures, including the District's procedures for handling the registration or enrollment of unaccompanied minors, undocumented youth, and homeless youth. If such information is available online, please also provide a link to where it can be accessed on the District's website.
3. Copies of all District policies, practices, and procedures regarding the screening and placement of unaccompanied minors, undocumented youth, and homeless youth who are newly-enrolled in District schools. Such documentation should include all information regarding the evaluation and identification of such students' needs (including but not limited to the identification of students with disabilities and English language learners) and District policies, practices, and procedures ensuring that all such students receive appropriate schedules, placements, services, and academic programming. If such documents are available online, please also provide links to where they can be accessed on the District's website.
4. Documents sufficient to identify the name(s) and contact information for the individual(s) responsible for enrollment/registration in the District. If such information is available on-line, please also provide a link to where it can be accessed on the District's website.
5. Documents sufficient to identify the name(s) and contact information for the District's federal McKinney-Vento homeless liaison(s). If such information is available on-line, please also provide a link to where it can be accessed on the District's website.
6. All documents setting forth the District's process for making student residency, age, and homelessness determinations, including the name(s) and contact information of District personnel involved in such determinations.
7. For the period between June 1, 2014 and October 23, 2014, documents sufficient to demonstrate (i) the number of unaccompanied minors and/or other undocumented youths who requested enrollment in the District, (ii) the number of such students who were denied enrollment during that period, (iii) for such students enrolled by the District, the average timeframe from application for enrollment to enrollment by the District, (iv) for such students enrolled by the District, the average timeframe from enrollment to commencement of classes and services being provided to such students, and (v) the number of such enrollment applications pending as of the date of the District's submission, including the date on which the application for enrollment was first made.

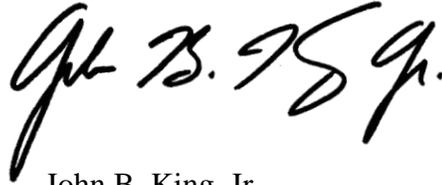
We ask that the District submit these documents in electronic format by emailing them as attachments to the following address: District.Enrollment@ag.ny.gov. Please identify the name of your school district in the subject line of your email. If you have any questions or

would like to discuss this matter further, please contact Assistant Attorneys General Justin Deabler or Dariely Rodriguez of the OAG's Civil Rights Bureau at (212) 416-8250.

Sincerely,



Eric T. Schneiderman



John B. King, Jr.

cc: Kristen Clarke
Bureau Chief, Civil Rights Bureau
Office of the New York State Attorney General

Cosimo Tangorra, Jr.
Deputy Commissioner for P-12 Education
New York State Education Department