



October 28, 2010

Acting Commissioner Rochelle Hendricks
New Jersey Department of Education
100 River View Plaza, P.O. Box 500
Trenton, NJ 08625

Dear Acting Commissioner Hendricks:

As organizations concerned with the education of all New Jersey children, we were pleased to see your memorandum dated October 25, 2010, regarding the enrollment of immigrant and/or undocumented students. We are writing to request that you take further action to ensure that school districts comply with state and federal law regarding what information may be required when children seek to enroll in public schools in New Jersey.

As indicated in your letter to school districts, there is well-settled federal law on this issue. Nearly three decades ago, the Supreme Court held in *Plyler v. Doe*, 457 U.S. 202 (1982), that undocumented children living in the United States could not be precluded from public elementary and secondary schools based on immigration status. New Jersey's state law (N.J.S.A. 18A:38-1) clearly states that domicile and age are the only factors to determine eligibility for a free public education. All children between the ages of five and 20 are eligible to attend public school, regardless of their immigration status. This is also supported by NJ Administrative Code and the Federal Privacy Act of 1974.

Despite the longstanding existence of unambiguous guidance, there has been inadequate compliance among many school districts throughout New Jersey.

You may know that in 2006 and 2008 the American Civil Liberties Union of New Jersey (ACLU-NJ) conducted survey projects to assess the legality of enrollment requirements in school districts throughout the state. In 2008, the ACLU-NJ called 635 school districts in all counties of New Jersey, and made contact with 516. Of those, 139 school districts – over one in four – illegally required Social Security Numbers (SSN) or other information that would reveal the immigration status of students seeking to enroll. In addition, another 48 school districts suggested that such information would aid in the registration process. Thus, a total of 187 school districts – more than one in three – acted in violation of the law. For many children of undocumented immigrants in New Jersey, if a school district so much as inquires about SSN or citizenship, the parents will turn away from trying to register their children due to fear of deportation or other consequences.

After conducting our survey in 2008, the ACLU-NJ sent letters to the 187 non-compliant school districts requesting that the demands for SSN numbers or information about immigration status be removed from enrollment forms and that administrative staff who may handle such inquiries be trained about the law.

At the same time, the ACLU-NJ requested that the State Department of Education (DOE) issue a formal, written directive to all school superintendents in New Jersey reminding them of the law; monitor compliance; require school districts to train frontline school personnel who handle such inquiries from

parents of prospective students; and require school districts to revise all registration forms, including information posted on web sites, so they comply with the law.

Despite such efforts, in recent months several of the undersigned groups have received complaints from undocumented immigrant parents who have received erroneous answers to their questions regarding what information is required in order to enroll their children in public schools.

Thus, while we are pleased that you contacted the chief school administrator and charter school leaders, given the risk that such requirements serve to exclude children from the education to which they are entitled, we request that the DOE to take additional concrete steps to ensure that school districts comply with the law.

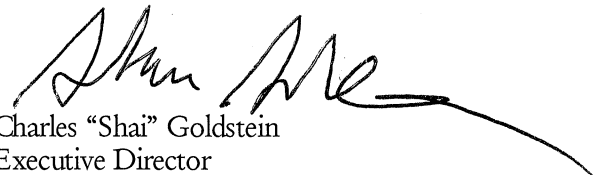
To aid in that process, we have enclosed a Quick Reference Guide to assist school personnel in responding to questions about documentation that can be required of prospective students. We ask that you distribute it to all districts and instruct them to provide it to all schools, to help ensure compliance with the law. We also ask you to develop systems to monitor adherence with your October 25th memorandum on an ongoing basis.

Thank you in advance for your attention to this important matter.

Sincerely,



ED BAROCAS
Legal Director
American Civil Liberties Union of NJ



Charles "Shai" Goldstein
Executive Director
New Jersey Immigration Policy Network

Diana MTK Autin
Executive Co-Director
Statewide Parent Advocacy Network
NJIPN Education Co-Chair

Marlene Lao-Collins
Director of Social Concerns
New Jersey Catholic Conference
NJIPN Vice-Chair; Public Policy Committee, Chair

Co-Signers:

Advocates for Children of NJ (ACNJ)
American Arab Forum
American Civil Liberties Union (ACLU)
American Friends Service Committee Immigrant Rights Program, Newark
American Jewish Committee of NJ
Casa Esperanza
Casa Freehold
Disability Rights NJ
Diversity Dynamics, LLC
Education Law Center
El Comité de Apoyo a Los Trabajadores Agrícolas/ Farm Workers Support Committee (CATA)
Hispanic Chamber of Commerce of New Jersey
Hispanic Directors Association of NJ
International Institute of New Jersey
IRATE & First Friends
Jamaican Organization of NJ
Latino Action Network (LAN)

Latino Coalition of Monmouth County
Latino Leadership Alliance of New Jersey
Lutheran Office of Governmental Ministry in New Jersey
NASW-NJ
New Jersey Catholic Conference
New Jersey Commission on New Americans
New Jersey Immigration Policy Network (NJIPN)
New Jersey Institute for Social Justice
New Jersey Policy Perspective
Pax Christi NJ
SEIU Local 32BJ
South Asian Americans Leading Together (SAALT)
Statewide Parent Advocacy Network (SPAN)
The United Caribbean American Network of NJ
The Statewide Education Organizing Committee (SEOC, Inc.)
The Ridgewood Unitarian Society- Social Justice Council
The Multicultural and Ethnic Office of the Archdiocese of Newark
Unitarian Universalist Legislative Ministry of New Jersey (UULMNJ)
Wind of the Spirit

CC: New Jersey Commission on New Americans



Quick Reference for School Personnel

What you can and cannot ask of students registering for school

What public schools CAN ask for regarding a registering child:

- Birth certificates (a certified copy is acceptable). If not available at registration it must be provided to the school within 30 days.
- Immunization records
- Transfer card and transcripts
- A current report card if transferring from another state or district
- Proof of residency in the school district (but cannot require certificates of occupancy from local housing inspectors)
- Proof of guardianship or natural parent

What public schools CANNOT ask for regarding a registering child:

- Social Security numbers
- The child's or parents' immigration status, or any kind of document proving immigration status of the child or parent
- Income tax returns
- A United States birth certificate (an employee can ask generally for a birth certificate but cannot require that it be a U.S. birth certificate)
- Documentation or information relating to compliance with local housing ordinances or conditions of tenancy

Relevant state and federal law:

- Domicile and age are the ONLY factors to determine eligibility for a free public education. N.J.S.A. 18A:38-1a.
- Public schools may not exclude any student from enrollment based on immigration status, as decided in the U.S. Supreme Court decision, *Plyler v. Doe*, 457 US 202 (1982).
- Children between ages 5 and 20 in a school district are entitled to an education regardless of immigration status. N.J.S.A. 18A:38-1.
- New Jersey law prohibits keeping students from public elementary and secondary schools on the basis of immigration/visa status (except for F1 (student) visas). N.J.A.C. 6A:22-3.4(d) and N.J.A.C. 6A:22-3.3(b).