

SAMPLE LETTER TO DISTRICT WHERE ENROLLMENT POLICIES ARE PROBLEMATIC

DATE

[NAME]

[SUPERINTENDENT, SCHOOL SYSTEM]

ADDRESS

ADDRESS

EMAIL

Re: School district obligations to serve all students regardless of background or immigration status

Dear Superintendent [NAME]:

I write to remind you of a shared goal: protecting all students' right to access public education, regardless of their background or immigration status. As you know, all students have the right to enroll in public school, irrespective of the actual or perceived citizenship or immigration status of the students or their parents or guardians. More than thirty-nine years ago in *Plyler v. Doe*, the United States Supreme Court held that children cannot be denied equal access to enroll in public schools based on their immigration status.¹⁰⁵ Under federal law, public elementary and secondary schools must ensure that their policies, practices, and procedures do not discriminate on the basis of race, color, or national origin.¹⁰⁶

The District's Registration and Enrollment Materials Violate Federal and/or State Law

It has come to our attention that some of your publicly available school registration and enrollment materials contain requirements that prevent or discourage undocumented students or documented students in mixed-status families from enrolling in and attending your schools. Specifically, *[insert summary of details – e.g., the district handbook states that students must provide their a Social Security Number number to enroll in school]*. These documents are attached at the end of this letter as exhibits. See Ex. A. Such requirements are prohibited by federal law and policy.¹⁰⁷

To help school districts comply with their obligations under federal law, the United States Departments of Justice and Education released guidance to school districts in 2014, clarifying how districts must provide equal access to education for all students.¹⁰⁸ We have attached this guidance, which includes a letter and two fact sheets. See Ex. B. These documents explain that, under federal law, school districts cannot request information with the purpose or the effect of denying students access to public schools on the basis of, among other things, race, color, or national origin. Nor may districts chill or discourage students from attending public educational programs based on their or their parents' or guardians' actual or perceived national origin or immigration status. Indeed, the Eleventh Circuit has held that a statute that “significantly interfere[d] with the exercise of the right to an elementary public education as guaranteed by *Plyler*” violated the Equal Protection Clause.¹⁰⁹

The law recognizes that schools may ask for information to confirm certain key facts necessary to the appropriate enrollment of students and the operation of public schools, such as a student's age, that the student lives in the district, and that the student has received the immunizations necessary to enroll in school. But districts may not require forms of proof of this or related information that are difficult or impossible for undocumented students or students with undocumented parents or guardians to obtain.

In addition to the issues noted above, we want to remind you that the McKinney-Vento Homeless Assistance Act¹¹⁰ requires that school districts immediately enroll homeless students in schools, even if they are unable to provide documents at the time of enrollment or thereafter.¹¹¹ Children may be considered “homeless” under McKinney-Vento for many reasons, including when a child’s family is sharing an apartment, manufactured home, or housing with other families due to economic hardship; when a child is living in a motel or campground; or when a child’s parents are migratory workers.¹¹² To fully comply with McKinney-Vento, school districts must include a statement in any registration and enrollment materials stating that students experiencing homelessness will be immediately enrolled whether or not they can produce the kinds of documents described above.

Recommendations

There are some straightforward steps available to you to remedy the concerns we have raised, including that, for all registration, enrollment, and other related school materials (e.g., handbooks), whether available on paper or online, you *[include as factually appropriate]*:

- 1.** Remove as a condition of enrollment all requests for U.S.-based identification, voter registration, and vehicle registration, for students or their parents or guardians¹¹³;
- 2.** State whenever you request a Social Security number that provision of such information is voluntary, and that parents or guardians may decline to provide it for any reason by signing a statement of objection under *[state statute if applicable]* and link to a sample statement of objection in English and Spanish¹¹⁴;
- 3.** Where a form includes a space for a Social Security number, insert “voluntary” in parentheses next to this space¹¹⁵;
- 4.** Amend requests for birth certificates to explicitly state that families may prove the age of their child using other documents, including, but not limited to, passports, adoption records, religious records, official school transcripts, and affidavits, as set forth in *[add regulations or rules based on state or district policy]*;
- 5.** Amend requests for leases or utility bills to explicitly state that families may provide proof of residency using other documents, including, but not limited to, letters from familial employers, copies of money orders made out for payment of rent, cellphone bills, and affidavits;
- 6.** Provide all registration and enrollment materials in a language that students and parents or guardians understand.¹¹⁶

We are willing to work with you to review any changes you propose to district materials. We look forward to your response by *[date]*. We look forward to meeting our shared goal of ensuring that all students’ right to access education is properly protected, as required by state law, federal statutes, and the U.S. Constitution. If you have questions, please contact me at *[insert contact information]*.

Sincerely,

[Name]

87 Guidance from the U.S. Departments of Justice and Education explains, “If a district chooses to request a Social Security number, it shall inform the individual that the disclosure is voluntary, provide the statutory ... basis upon which it is seeking the number, and explain what uses will be made of it.” Plyler Fact Sheet at 1.

88 Some states separately prohibit schools from requiring a Social Security number to enroll in public school. See, e.g., La. R.S. § 17:3914(C)(1)(j) (prohibiting school officials from requiring Social Security numbers to enroll students in public school).

89 See 20 U.S.C. § 7801(26) (prohibiting charging district residents to attend public school).

90 Doe v. Plyler, 458 F. Supp. 569 (E.D. Tx. 1978).

91 See, e.g., La. R.S. § 17:3991(E)(3) (prohibiting “[c]harg[ing] any pupil any tuition or an attendance fee of any kind”); see also La. Admin Code, tit. 28, pt. CXXXIX, § 2107(H) (“A charter school shall not charge any student any tuition or an attendance fee of any kind.”).

92 List adapted from Plyler Fact Sheet.

93 We include references to immigration-related documents as a fact, but do not encourage students or parents to provide immigration-related materials to schools.

94 See Martinez v. Bynum, 461 U.S. 321, 328-29 (1983).

95 List adapted from Plyler Fact Sheet.

96 We suggest minimizing the amount of immigration-related paperwork that is presented to a child’s school as part of the registration and enrollment process. School districts should not seek such documents and if they are presented to verify identity or guardianship, school officials should consider visually inspecting the documents but not maintaining a copy in the student’s permanent file.

97 34 C.F.R. § 99.3.

98 An example might include a grandparent who handles a child’s educational issues and perhaps even lives with the child, although the parent still maintains custody.

99 Some custody orders, for example, limit one parent’s unaccompanied access to the student, or limit access to student information for family court reasons.

100 42 U.S.C. § 11432(g)(3)(C)(iii).

101 See, e.g., La. R.S. § 17:170(a)(1)(A) (“Each person entering any school within the state for the first time, including elementary and secondary schools, kindergartens . . . at the time of registration or entry shall present satisfactory evidence of immunity to or immunization. . . or shall present evidence of an immunization program in progress.”).

102 20 U.S.C. §§ 6391, 6811.

103 U.S. Depts. of Justice, Educ., and Health and Human Servs., “Information on the Rights of Unaccompanied Children to Enroll in School and Participate Meaningfully and Equally in Educational Programs,” at 4 (Sept. 2014), available at <https://www2.ed.gov/about/overview/focus/rights-unaccompanied-children-enroll-school.pdf>.

104 Some state laws place minor limits on enrollment (e.g., limiting enrollment in the last few weeks of the school year), but generally, schools enroll all students no matter when they arrive.

105 457 U.S. 202 (1982).

106 See Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (Title IV); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI); the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, et seq. (EEOA).

107 See, *infra*, Part II.

108 See Dear Colleague Letter, U.S. Dept. of J. & U.S. Dept. of Ed., available at: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerletter.pdf>; Fact Sheet: Information on the Rights of All Children to Enroll in School, U.S. Dept. of J. & U.S. Dept. of Ed. (May 8, 2014), available at: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf>; Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents, U.S. Dept. of J. & U.S. Dept. of Ed. (May 8, 2014), available at: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf>.

109 Hispanic Interest Coal. of Alabama v. Governor of Alabama, 691 F.3d 1236, 1245-49 (11th Cir. 2012).

110 42 U.S.C. §§ 11301 et seq.

111 42 U.S.C. § 11432(g)(3)(C)(i).

112 42 U.S.C. § 11434a(2).

113 Georgia State Board Rule 160-5-1-.28 (2)(d)(1) lists the documents acceptable for enrollment. It does not indicate that these documents must

have been issued by or in the United States. Ga. Comp. R. & Regs. 160-5-1-.28 (Student Enrollment and Withdrawal), available at <http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/SBOE%20Rules/160-5-1-.28.pdf>.

114 Per Ga. Code § 20-2-150(d), a Georgia school district may request a student’s Social Security Number, but must allow the parent to sign a waiver if they do not wish to provide the number for any reason. The Georgia Department of Education has issued guidance explicitly affirming this right, stating, “No student will be denied enrollment in a public school for declining to provide his or her Social Security number or for declining to apply for such a number.” Department of Education, State of Georgia, “Guidance for the Student Enrollment and Withdrawal Rule, Revision Five,” at 38 (Sept. 13, 2012), available at <https://www.gadoe.org/External-Affairs-and-Policy/Policy/Documents/Guidance%20for%20Student%20Enrollment%20and%20Withdrawal%20Rule.pdf>.

115 *Id.*

116 Federal law requires schools to provide meaningful access to English Language Learner (ELL) students and limited English proficient families. Under Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, public schools must ensure that ELL students can participate meaningfully and equally in educational programs. In addition, the Every Student Succeeds Act of 2015 requires districts accepting federal funds to provide language accommodations to non-English-speaking families. 20 U.S.C.A. § 6312(e)(4) (“The notice and information provided to parents under this subsection shall be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.”).