

April 10, 2013

**VIA U.S. MAIL AND FACSIMILE**

Thomas R. Bice  
State Superintendent of Education  
50 North Ripley Street  
Montgomery, AL 36104

Re: Admissions Procedures

Dear Superintendent Bice:

We are writing to notify you that, despite decades of controlling authority and recent admonitions from your office, scores of public school districts across Alabama are demanding student social security numbers as a condition of enrollment. This practice comes dangerously close to imposing upon a child's right to public education regardless of immigration status.

It is well-settled law that undocumented school-age children have a constitutional right to a free public education.<sup>1</sup> School districts may not deny a student admission if he or she is unable or unwilling to provide a social security number. Nor may a district take any action that would "chill" or dissuade undocumented students from receiving an education.<sup>2</sup> If a school district chooses to request a social security number, federal law requires that the district (1) inform the individual that disclosure of their social security number is voluntary; (2) provide the statutory or other basis upon which it is seeking the number; and (3) explain what uses will be made of the number.<sup>3</sup> The purpose of these safeguards is to ensure that immigrant students are neither singled out nor excluded from school because of their immigration status.

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<sup>1</sup> All children present in the United States have a constitutional right to attend public elementary and secondary schools, regardless of their immigration status. This is not a new rule, having been announced by the United States Supreme Court over 30 years ago in the case of *Plyler v. Doe*, 457 U.S. 202 (1982). The *Plyler* Court concluded that "education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." *Id.* at 221. Now, as in the time of *Plyler*, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Id.* (quoting *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)).

<sup>2</sup> The United States Department of Justice and the United States Department of Education have been clear that *Plyler* prohibits state action that would "chill" or hinder children's right of access to education. See U.S. Dep't of Justice & U.S. Dep't of Ed., Joint "Dear Colleague" Letter (May 6, 2011) [hereinafter "Joint 'Dear Colleague' Letter"], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>. The Joint "Dear Colleague" Letter specifically instructs administrators "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." *Id.* at 2.

<sup>3</sup> U.S. Dep't of Justice & U.S. Dep't of Ed., Joint "Dear Colleague" Letter (May 6, 2011) at 2 (citing U.S.C. 552a (note)) [hereinafter "Joint 'Dear Colleague' Letter"], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague->

In light of the climate of fear created in the wake of Alabama's unconstitutional anti-immigration statute, H.B. 56, it is particularly important to avoid creating the impression that immigrant children are unwelcome in our school systems. However, a significant number of Alabama school districts are failing to comply with the clear rules stated above. We have conducted a survey of all readily-available district enrollment forms. Our sample consists of 124 district-wide and school-specific enrollment forms representing 81 districts statewide.<sup>4</sup> Of the 43 district-wide enrollment forms we were able to obtain, 42 requested a social security number and only 3 stated that providing a social security number was optional. Of the 81 school-specific enrollment forms, 79 required a social security number and only 2 stated that the social security number was optional. Overall, out of 124 total enrollment forms, only 6 forms fulfilled the first requirement of informing individuals that disclosing their social security number was optional. Only 2 forms explained what the number will be used for, and none complied with the last requirement of providing the statutory basis for requesting the number. Thus, not a single form we obtained complies with all three required safeguards. These findings suggest a pervasive practice of requesting social security numbers in violation of clearly established federal law.

Magnet Schools and International Baccalaureate ("IB") programs seem to follow this disturbing trend. Mobile County Public Schools Magnet School Program Application requests the applicant's social security number, specifically marked with an asterisk indicating that the number is required, and also requests the social security numbers of the applicant's siblings. Huntsville's Academy for Science and Foreign Language also asks for the applicant's social security number, and marks it as required information. In Montgomery County, the Elementary Schools Magnet Program Application asks for a social security number, as does the Baldwin Arts and Academics Magnet School. While Jefferson County International Baccalaureate School does not ask for a social security number on its application, the school's enrollment form nonetheless does.

This trend is particularly troubling given that Magnet Schools and IB programs represent many of the top public school programs in Alabama. To chill application and enrollment of immigrant students at these schools specifically is to deny them access to the best quality education available in our state.

As Alabama's Superintendent of Education, charged with executing the educational policy of the Alabama Board of Education, we urge you to take prompt and decisive action to

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201101.pdf. See also Alabama Dep't of Ed., Memorandum to Alabama Superintendents from Thomas R. Bice Regarding Enrollment Documents (Aug. 17, 2012). The letter also emphasized that under state law, "Alabama regulations mandate that if a person is entitled to admittance to school but does not have a SSN, the local superintendent or agency is to assign him or her a temporary identification number according to state regulations. This number is to be used to generate the unique student identifier." *Id.*

<sup>4</sup> Enrollment and application forms were found either online on school or district websites or through phone or in-person requests. Not all districts responded. Survey results are detailed in the attached data report. Enrollment requirements published online by schools or districts, either in their student handbooks or Board of Education policies, were also examined. This data is also recorded in the attached report.

remedy this situation. We therefore request that you advise local educational agencies of their responsibilities and provide them with technical assistance in order to guarantee compliance.<sup>5</sup>

It is critical that this matter be resolved before families begin the planning process for the next school year. We therefore request that you contact us no later than April 22, 2013 with assurances that this matter will be appropriately addressed and that no child will be excluded from enrolling in public school based on his or her immigration status. We look forward to working with you on behalf of the children of Alabama. Thank you for your prompt attention to this important matter.

Sincerely,



Caren Short  
Staff Attorney

Enclosures

cc: Larry Craven  
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<sup>5</sup> The following suggested language could be used by a school or district when requesting social security numbers to comply with legal requirements: "Disclosure of social security number is optional. No student will be denied enrollment due to lack of social security number. If provided, the social security number will be used for [state purpose(s)]. The [school/district] requests the social security number pursuant to [state statutory or other authority]."