

April 7, 2014

**VIA U.S. MAIL, FACSIMILE,
& ELECTRONIC MAIL**

Jim Cunningham
Superintendent
Fort Payne City Schools
205 45th Street NE
Fort Payne, AL 36967
Fax: 256-845-4962
Email: jcunningham@ftpayk12.org

Re: Denial of Enrollment at Fort Payne High School

Dear Superintendent Cunningham:

We represent J.T., a seventeen year old student living within the boundaries of Fort Payne City Schools, who was denied enrollment at Fort Payne High School simply because he was born in Mexico.¹ J.T. is a bright young man, eager to learn and graduate high school, yet he was told that he was not an acceptable student at Fort Payne High School. Federal law is clear. All children within the District's borders are entitled to enjoy the benefit of a public education, regardless of national origin. The District's actions turning away a child at the schoolhouse door and denying him an education because of his national origin violate federal law and the Constitutional guarantee of equal protection under the law. No child should experience the shame of being excluded from public school based on his national origin, and such behavior by the District must be remedied without delay.

J.T. immigrated to the United States at age one. He has attended public schools in Colorado, Alabama, and Texas. Although his parents are monolingual Spanish speakers, J.T. is bilingual.

In January 2014, J.T. and his parents visited Fort Payne High School to enroll the student in school. They brought with them proof of residency and J.T.'s birth certificate. The family was turned away and told to return with a completed immunization form.

¹ To protect the confidentiality of the student, his personal information and additional copies of written proof of residency will be provided to the District under separate cover.

The family returned on January 31, 2014 with all of the required documentation necessary to support enrollment.² Despite producing a completed enrollment application form, immunization record, birth certificate, social security card, and two utility bills, J.T. was again denied admission. J.T. and his step-father met with both a school counselor and the school principal who questioned the family about their English language fluency, and the student individually regarding his academic history. J.T. advised that he needed to make up two classes that he had failed in the previous school year, at which point the principal stated, “Right now, I’m going to have to say that I’m not going to take you.”

At no time during either of these meetings did the school offer to provide an interpreter for the family. All conversations proceeded through J.T., without allowing sufficient time for the student to convey the entirety of the communication to his mother or step-father.

Later that day, J.T. and his family visited your office. J.T., once again speaking for his family without an interpreter, explained what happened at the high school. Having already spoken with the principal, you concluded that the school had no obligation to enroll the student indicating that because J.T. is seventeen years old, the principal had no obligation to enroll him.³ You informed the family that the Principal would check our client’s records and call him with a decision.

The family left the building and our client explained to his mother and stepfather what happened. Because they could not believe their son had been denied enrollment in school, the family went back to the Superintendent’s office because our client intended to beg to be enrolled. The secretary would not let the family see you, and were told that they could not visit your office again unless they first heard from the school principal. Your office refused the parent’s request for a written notice of denial. To date, the family has never heard from the principal or anyone else in the District. Because of these actions, J.T. has missed nearly an entire semester of school.

Applicable Law

Under Title VI, school districts that receive federal financial assistance are prohibited from discriminating against or otherwise excluding students from participating in activities or receiving educational benefits on the basis of race, color, or national origin. 42 U.S.C. § 2000d. The United States Department of Justice and Department of Education have made clear that recipients may not unjustifiably utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination.

Without question, all children present in the United States have a constitutional right to attend public elementary and secondary schools, regardless of their federal immigration status. As the United States Supreme Court noted in 1982, equal access to education is an important

² During various conversations with school staff, the family was asked to produce transcripts from J.T.’s previous school. Although the family attempted to comply, they were advised that the sending school preferred that the request come directly from Fort Payne. On January 30, a school counselor indicated that she would retrieve J.T.’s records from his previous school.

³ Although Alabama has a compulsory attendance law, Ala. Code 16-28-3, which requires children between the ages of six and seventeen to attend school, the law by no means gives a school or district the right to deny a child enrollment solely because he or she is seventeen years old. Indeed, Ala. Code 16-28-44 instructs that no provision of Title 16 shall be construed to deny the right of any child granted pursuant to the United States Constitution.

constitutional principle because education is a child's only path to becoming a "self-reliant and self-sufficient participant[] in society." *Plyler v. Doe*, 457 U.S. 202, 222 (1982). The Supreme Court in *Plyler* explained that a public school education inculcates the "fundamental values necessary to the maintenance of a democratic political system" and "provides the basic tools by which individuals might lead economically productive lives." *Id.* at 221. Denying children access to a public school education, the Court reasoned, could doom them to live within "a permanent caste of undocumented resident aliens." *Id.* at 218-19. The United States Department of Justice and Department of Education have explained that *Plyler* prohibits not only denial of education on the basis of immigration status, but also state action that would "chill" or hinder children's right of access to education.

This denial of education to a child present in the District clearly violates Title VI and the holding of *Plyler v. Doe*. J.T. was given no legal justification for his denial of enrollment. The principal, speaking only in English to our client, and not his parents, informed our client that he was not able to enroll because he had failed two classes during the previous semester. As Superintendent, you informed our client that the principal has no obligation to enroll any student who is 17 years old. These justifications have no basis in District or state education policy; in fact, they are contrary to the nondiscrimination policies of both Fort Payne City Board of Education (Policy JAA) and the nondiscrimination policies found in the School Attendance Manual of the Alabama State Department of Education, both attached for your convenience. Our client can prove residence in the District and proof of appropriate age to enroll in school. Denial of enrollment based on his national origin, perceived immigration status, or limited English proficiency violates federal law.

Additional Concerns

Two other issues are cause for serious concern. First, the enrollment form currently used by the District violates the federal guidance that prohibits state action that would "chill" or hinder children's right of access to education and is contrary to guidance issued by the Alabama State Superintendent on multiple occasions, attached for your convenience. Fort Payne City Schools System Enrollment Form currently requests a student's Social Security number. To ensure that immigrant students are neither singled out nor denied access because of their status, both state and federal authorities have outlined strict rules regarding any request for a student's social security number. A school district may not deny enrollment to a student who is unable or unwilling to produce a social security number. Indeed, if a district requests a social security number, it must inform the student that disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. While the enrollment form does indicate that "[e]nrollment will not be denied to students classified as Homeless, Limited English Proficient or Migrant due to the absence of required documents," this does not satisfy the above required notification because it is not clear that providing a Social Security number is voluntary and that *no* student will be denied enrollment based on failure to provide it. We request that the enrollment form be updated to comply with federal law as soon as possible.

Second, the District's website continues to provide a memo to the public entitled "10-4-11 immigration law statement.pdf" regarding the requirements of Section 28 of HB56, which has since been enjoined by a federal court. The memo provides, in both English and Spanish, that "Section 28 requires that all students enrolling in Alabama public schools on or after September

29, 2011 present an original or certified copy of the student's birth certificate in order to complete the enrollment process." While the website also notifies parents that Section 28 has been stopped and "[a]ll schools will cease to identify birth origin of students through birth certificates or affidavits as previously directed," this information is provided *only in English* and the conflicting information is misleading and risks discouraging parents from attempting to enroll children who do not possess a certified copy of their birth certificate. It violates the federal guidance prohibiting state action that "chills" children's right of access to education, and we request that the "10-4-11 immigration law statement.pdf" memo be removed from the District's website as soon as possible and that the notice above be provided in Spanish as well as English.

Regarding J.T., we request written assurances that his enrollment will be processed immediately and that he will be enrolled at in Fort Payne City Schools effective Monday, April 14, 2014. We hope we will be able to resolve this promptly and amicably. If we do not receive confirmation that J.T. is enrolled by April 14, 2014, we will pursue available legal remedies.

Please contact me at (334) 956-8450 or caren.short@splcenter.org as soon as possible about resolving these important matters. I look forward to working with you.

Sincerely,



Caren E. Short
Staff Attorney

cc: David Beddingfield, President
Fort Payne City Board of Education

James B. Durham, Jr., Vice President
Fort Payne City Board of Education

Kathy Prater
Fort Payne City Board of Education

Randy McClung
Fort Payne City Board of Education

Carolyn Martin
Fort Payne City Board of Education

Robert K. Jordan, Attorney
Fort Payne City Board of Education

ATTACHMENTS

FORT PAYNE CITY BOARD OF EDUCATION

POLICY MANUAL

Approved July 31, 2002

Updated June 24, 2013

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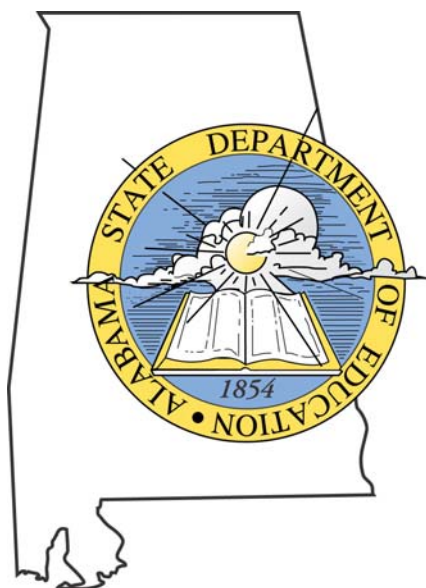
FILE: JAA

EQUAL EDUCATION OPPORTUNITY

The policy of the Fort Payne City Board of Education shall be as follows:

No student shall be denied access to programs or services on the basis of race, sex, national origin, limited English speaking ability, handicapping condition, or economic condition.

SCHOOL ATTENDANCE MANUAL



Revised 2011

**Joseph B. Morton
State Superintendent of Education**

**Prevention and Support Services Section
Alabama Department of Education
Gordon Persons Building
Montgomery, Alabama 36130-2101**

Joseph B. Morton
State Superintendent of Education

Thomas R. Bice
Deputy State Superintendent of Education

Alabama Department of Education
Division of Instructional Services
Prevention and Support Services Section

Revised 2011

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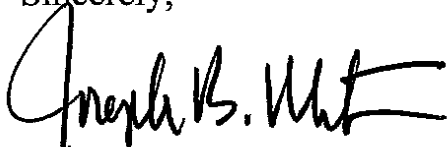
FORWARD

Well-established programs of school attendance continue to be an imperative responsibility for personnel at the local school and school system levels. This manual is designed to serve as a guide in the establishment of such programs. To ensure its usefulness, we have solicited the assistance of selected attendance officers and other personnel from the local board of education level and our own department to revise the manual issued in the 1999-2000 school year. The State Board of Education members and the State Department of Education appreciate the time and effort expended by our committee members. We also appreciate the local superintendents who allowed these members time to participate in this project.

No program will be useful unless it is implemented consistently and well. Therefore, I challenge each person at the local school level to become knowledgeable of the information provided herein and to consistently enforce the requirements for daily school attendance as well as timely arrival and departure of students and staff.

I pledge my support to you in the development and implementation of sound school attendance programs and rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph B. Morton". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

Joseph B. Morton
State Superintendent of Education

INTRODUCTION

The material presented in this publication may be the first step in the development of local attendance policies and procedures. This manual represents an attempt to organize information from various sources such as state laws, State Board of Education policies, committee recommendations, legal opinions of the Attorney General, interpretations of school laws by the State Superintendent of Education, and local education agency policies and procedures.

This material is primarily for reference. It is not intended as a substitute for local board policies and procedures, nor advice of counsel. **Where statutes are cited, please refer to the full text for clarification.**

Whenever possible, the basis for recommendations and policy statements is given.

REVISION COMMITTEE ROSTER TO REVISE THE SCHOOL ATTENDANCE MANUAL

Dr. Mark Neighbors
Superintendent
Opelika City Board of
Education

Ms. Pamela Anderson
Attendance Officer
Madison County Board of
Education

Mrs. JaNay Dawson
Assistant Superintendent
Baldwin County Board of
Education

Mrs. Donna Dickson
Student Service Coordinator
Shelby County Board of
Education

Ms. Josephine Hollins
Director of Attendance
Birmingham City Board of
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Mr. Rodney Green
Assistant Superintendent
Blount County Board of
Education

Mr. Lee Ballard
Assistant Superintendent
Bullock County Board of
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Dr. Diane Holman
Assistant Superintendent
Ozark City Board of
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Mrs. Fran Stewart
Education Specialist
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Attendance Officer
Florence City Board of
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Mr. Jim Toney
Education Specialist
Alabama Department of
Education

Mrs. Marilyn Lewis
Education Specialist
Alabama Department of
Education

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No person shall be denied employment, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity on the basis of disability, gender, race, religion, national origin, color, age or genetics. Ref: Sec. 1983, Civil Rights Act, 42 U.S.C.; Title VI and VII, Civil Rights Act of 1964; Rehabilitation Act of 1973, Sec. 504; Age Discrimination in Employment Act; The Americans with Disabilities Act of 1990 and The Americans with Disabilities Act Amendments Act of 2008; Equal Pay Act of 1963; Title IX of the Education Amendment of 1972; Title II of the Genetic Information Nondiscrimination Act of 2008: Title IX Coordinator, P.O. Box 302101, Montgomery, Alabama 36130-2101 or call (334) 242-8165.



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Thomas R. Bice
State Superintendent of Education

July 22, 2013

MEMORANDUM

TO: County and City Superintendents of Education

FROM: Thomas R. Bice *TRB*
State Superintendent of Education

RE: Student Enrollment Procedures

With the start of the new school year fast approaching, we need your assistance in assuring that all children in Alabama have access to a quality education regardless of their race, ethnicity, birthplace, or the birthplace of their parents. Please be mindful of the following student enrollment procedures and ensure that this information is implemented consistently in all of your schools and publicly shared via all school and school system Web sites, etc.

1. Each school should have a designated person or persons responsible for student enrollments.
2. If there is a question about the sufficiency of documentation provided by a parent/guardian, the school **should always enroll the student first and then seek any clarification or additional information that may be needed.**
3. Regarding the use of a Social Security Number (SSN) for enrollment purposes, schools should make clear that providing a child's SSN is voluntary, explain how the number will be used and the legal authority for the request, and explain that if a parent/guardian chooses not to provide a child's SSN that will **not bar a child from enrolling in school.** Failure of a parent/guardian to provide a child's SSN will not bar a child from being enrolled in school. No parent/guardian should have to provide his/her SSN in order to enroll a student.
4. Assign a unique student identification number to any student enrolling without a SSN per Alabama regulations.
5. A student's birth certificate may be requested in order to verify age. However, schools may not bar a student from enrolling because the student has a foreign birth certificate or presents no birth certificate. A flexible approach should be taken that would allow for alternative documentation to prove age such as a religious, hospital, or physician's certificate showing date of birth; a baptismal certificate; an entry in a family Bible; an adoption record; an affidavit from a parent; previously verified school records; etc.
6. While schools request documents for proof of residency, it is **not** a requirement in state law that parents/guardians provide an Alabama driver's license or Alabama ID for that purpose. Under no circumstances should schools deny enrollment to students because their parent/guardian does not produce an Alabama driver's license or state-issued ID. Residency may be established through multiple means including a **utility bill or a residential lease.**

No child is to be denied enrollment in any school or participation in school activities and programs based on the immigration status of the child or the child's parents/guardians. If you have any questions regarding enrollment issues, please contact the Prevention and Support Services Section of the Alabama State Department of Education at 334-242-8165.

TRB:BAD
FY13-1018

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DEPARTMENT OF EDUCATION

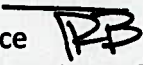


Thomas R. Bice
State Superintendent of Education

August 17, 2012

MEMORANDUM

TO: City and County Superintendents of Education

FROM: Thomas R. Bice 
State Superintendent of Education

RE: Enrollment Documents

As you are aware, the new mandatory attendance age is now in effect and students between the ages of 6 and 17 must be enrolled in school. Because some questions have arisen during the enrollment process, this is to provide clarification about the use of documents and information such as driver's licenses and social security numbers (SSNs).

First and foremost, if there is any doubt about the sufficiency of the documentation that a parent provides for enrollment, we request that your school system always enroll the student first. Then, you may seek clarification from the Alabama State Department of Education (ALSDE) through Mr. Jim Toney, Education Specialist in Prevention and Support Services, at 334-242-8165.

As a reminder, schools are to continue to apply the enrollment procedures that were in place prior to the enactment of Section 28 of H.B. 56, the provision of Alabama's immigration law that concerns elementary and secondary schools.

A school system may request a birth certificate to verify that a student falls within the minimum and maximum age requirements. However, a school system may not bar a student from enrolling because that student has a foreign birth certificate or presents no birth certificate at all. School systems should have a flexible approach and allow for the presentation of alternative documentation to prove age. Examples include: a religious, hospital, or physician's certificate showing date of birth; a baptismal certificate; an entry in a family bible; an adoption record; an affidavit from a parent; or previously verified school records.

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Secretary and
Executive Officer

City and County Superintendents of Education

Page 2

August 17, 2012

Regarding the use of a SSN, as explained in the attached *Dear Colleague* letter, schools should make clear that providing a child's SSN is voluntary, explain how the number will be used, and explain that if a parent chooses not to provide a child's SSN that the child will not be barred from enrolling in school. 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.

Finally, while school systems request documents for proof of residency, it is not a requirement in state law that parents provide an Alabama driver's license for that purpose. A school system should not require an Alabama driver's license for enrollment and/or to prove residency. Under no circumstances should schools deny enrollment to students because their parent does not produce an Alabama driver's license. Residency may be established through multiple means and, again, we ask that you be flexible in the documentation that your school system accepts.

Please assist us in fulfilling our commitment to help all children in Alabama fully pursue a quality education, regardless of their race, ethnicity, birthplace, or the birthplace of their parents. We cannot emphasize enough that no child is to be denied enrollment in any school or participation in school activities or programs based on his or her immigration status.

TRB:LAK

Attachment

FY12-1013


U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
*Office for Civil Rights
Office of the General Counsel*

May 6, 2011

Dear Colleague:

Under Federal law, State and local educational agencies (hereinafter “districts”) are required to provide all children with equal access to public education at the elementary and secondary level. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. *See* 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

Additionally, the United States Supreme Court held in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), that a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise. Denying “innocent children” access to a public education, the Court explained, “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. . . . By denying these children a basic education, we 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*, 457 U.S. at 223. As *Plyler* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student’s entitlement to an elementary and secondary public education.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents

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or guardians. Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).¹ For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district.

A school district may require a birth certificate to ensure that a student falls within district-mandated minimum and maximum age requirements; however, a district may not bar a student from enrolling in its schools based on a foreign birth certificate. Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. *See* 5 U.S.C. §552a (note).² If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish 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. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the

¹ Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child's parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(i).

² Federal law provides for certain limited exceptions to this requirement. *See* Pub. L. 93-579 § 7(a)(2)(B).

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enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

Please contact us if you have any questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, or the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov. You may also visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the OCR enforcement office that serves your area. For general information about equal access to public education, please visit our websites at <http://www.justice.gov/crt/edo> and <http://www2.ed.gov/about/offices/list/ocr/index.html>.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Charles P. Rose
General Counsel
U.S. Department of Education

/s/

Thomas E. Perez
Assistant Attorney General
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