

May 17, 2018

Superintendent Alberto M. Carvalho
Miami-Dade County Public Schools
1405 NE Second Ave., Suite 912
Miami, FL 33132
Via email to: Superintendent'sOffice@dadeschools.net

Re: Urgent Request to Enroll ELL Student and to Address Systemic Denial of Enrollment to ELL Immigrant Children

Dear Superintendent Carvalho:

The Southern Poverty Law Center (SPLC) represents ██████████, a 16-year-old English Language Learner (ELL) child from Guatemala who has been denied enrollment at South Dade Senior High School and pushed into adult education by Miami-Dade County Public Schools (“Miami-Dade Schools”). We seek ██████████’s immediate enrollment in high school and reiterate our request for a meeting with you to discuss the systemic denial of enrollment to thousands of immigrant ELL children in Miami-Dade Schools. Exclusion of these children from public school violates state and federal law and conflicts with the welcoming messages you have sent to immigrant children in Miami-Dade County.

On March 14, 2018, we sent a letter to you seeking the immediate enrollment of our client, another immigrant ELL student, in a Miami-Dade public high school. In that letter, the SPLC noted that our client’s situation was not an aberration—instead, it is part of a pervasive practice within Miami-Dade Schools to deny high school enrollment to ELL teenagers, forcing them into adult education programs where they are permanently segregated from their English-speaking peers and cannot earn a high school diploma. We attached records from the Florida Department of Education showing that over 1,800 ELLs between ages 15 and 17 were enrolled in adult education in Miami-Dade County during the 2016-2017 school year—including at least 23 fifteen year-olds, who are subject to compulsory education under Florida law and must be enrolled in regular public schools on a full time basis. *See* Fl. Stat. § 1003.21(1)(a)(1). We specifically requested a meeting to discuss how you will ensure that the widespread and recurring violations of the educational rights of ELL children in your school district do not continue.

While your office responded to our demand to enroll our individual client, you have not responded to our request for a meeting to discuss the broader and troubling denial of educational rights to ELL children. Nor did your office comment on the multiple denials of enrollment to

ELL children or the public records data that we reported in that letter. **We therefore again request that, in addition to enrolling ██████ at South Dade Senior High School without further delay, you meet with us to discuss how Miami-Dade Schools will cease excluding ELL teenagers from public school.**

We appreciate your public statements in support of the educational rights of immigrant children.¹ We ask you to translate those statements into concrete action by ensuring that ELL teenagers can attend Miami-Dade County public high schools, and that they are not shunted into adult education programs where they are segregated from their English-speaking peers, have no access to content classes, and can aspire only to take the General Educational Development (GED) test.

I. FACTUAL BACKGROUND

A. ██████ ██████ ██████

██████ came to the United States from Guatemala. ██████ lives with his ██████ ██████ ██████, who is his guardian. According to Miami-Dade Schools' Geographic Information System (<http://www.dadeschools.net/guidek-12/default.asp>), South Dade Senior High School is ██████'s home school.

On April 2, 2018, ██████ and his guardian visited Homestead Senior High School. A school employee had ██████ fill out the registration packet, only to notify him afterward that he was assigned to South Dade Senior High School.

Soon after, ██████ and his guardian went to South Dade Senior High School. A school registrar asked for ██████'s school records from Guatemala and for proof of vaccination. Once she looked over all the documents, she told ██████ that he could not enroll because he was too old and had only completed the equivalent of middle school. The registrar told ██████ that because of his age he would only have one year left of high school, so he should go to adult education instead, where he would be "better off." The registrar did not give ██████ or his guardian the option to enroll in high school.

██████'s favorite subjects are Science and Math. He is eager to go to high school so that he can study these subjects and prepare for a career in the STEM field. Each day that Miami-Dade Schools denies him that chance causes him extreme harm and pushes his dream further out of reach. ██████ is falling behind on key subjects and losing valuable time during which he could be earning credits toward a high school diploma and accessing the ELL Plan available at regular public high schools. The window for him to attend public high school narrows each day

¹ See, e.g., Jessica Bakeman, *Carvalho Slams Trump Immigration Policies in Speech: 'I Was Undocumented'*, WLRN (Nov. 29, 2017), <http://wlrn.org/post/carvalho-slams-trump-immigration-policies-speech-i-was-undocumented>; Mark Keierleber, *Q&A: Why Miami's Superintendent, Once an Undocumented Immigrant, is Banning ICE from His Schools*, THE 74 (March 22, 2017), <https://www.the74million.org/article/why-miamis-superintendent-once-an-undocumented-immigrant-is-barring-ice-from-his-schools/> (hereinafter "Carvalho Q&A").

as he gets older. Not only does this threaten his cognitive development and long-term career potential, but it denies him the benefits of association with students and teachers of diverse backgrounds. ██████'s situation is urgent and Miami-Dade Schools must remedy the harm immediately.

B. A Pattern of Immigrant ELLs Denied High School Enrollment

In our March 14 letter, we described how our 16-year old client had been denied high school enrollment and sent to adult education. We specifically noted four additional students who had been excluded from public school in 2017, and mentioned that we have spoken with at least 11 ELL children whom Miami Dade Public Schools had refused to enroll because of their limited English skills—including a client we brought to your attention in September 2016. In addition, we highlighted the data we obtained from the Florida Department of Education, which showed that there were approximately **1,800 students ages fifteen to seventeen enrolled in adult education in Miami Dade in the 2016-2017 school year, including: 23 fifteen year olds, 485 sixteen year olds, and 1,323 seventeen year olds.** We are reattaching that data here. *See* Ex. A.

We laid out the experiences of our client and eight additional students:

- A 16 year-old ELL child from Honduras, whose mother attempted to enroll her at six (6) different Miami-Dade County Public Schools, on ten (10) separate occasions from December 2017 to January 2018. On her last visit to Miami Senior High School, a staff person told the mother that her daughter could not enroll because the latter did not know English and would be unable to pass upcoming English tests. The staff person said that the school could only enroll the child in evening classes, because she had to learn English before she could go to regular public high school. The staff person also told the mother that once the child learned English she would be allowed to enroll in regular public high school for eleventh grade. The mother paid \$40.00 to enroll the child in Adult English classes because it was the only option available to her. After SPLC contacted your office on her behalf, the child was enrolled at Booker T. Washington Senior High School.
- Two ELL immigrant children from Guatemala who tried to enroll at South Dade Senior High School in September 2017, at ages 16 and 15, respectively. A staff member told them there were no seats available and they had to wait until January or February 2018. The staff member suggested that they attend adult education in the meantime.
- An ELL immigrant child who tried to enroll at Coral Gables Senior High School in April 2017, at age 16. A school counselor told him it would be better for him to enroll at the English Center, an adult education center that belongs to the Miami-Dade School system, “to save time.”
- An ELL immigrant child who attempted to enroll at Miami Senior High School in February 2017, at age 17. A school counselor told him he could only enroll in a 2-

hour course because he did not know enough English to enroll in high school. A neighbor told him about the English Center and he enrolled in adult classes there.

- An ELL child from Colombia, who attempted to enroll at Coral Gables Senior High School in July 2017, at age 15. He had previously tried to enroll at a middle school and was sent to Coral Gables Senior High School. Coral Gables Senior High School staff requested that he obtain vaccines. He complied. When he returned to enroll, an employee looked over his educational records from Colombia and told him that due to his age and his limited English ability, the English Center was the best option for him. He was not given the option to enroll at Coral Gables Senior High School.
- An ELL child from Honduras, who tried to enroll at Coral Gables Senior High School in July 2017, at age 16. She was told that the school was not her home school. She then attempted to enroll at her home school, Booker T. Washington Senior High School. The receptionist there told her that she could not enroll because of her age and lack of English ability. The school’s staff never tested her English ability. They only asked her how long she had been in the United States.
- An ELL child from Honduras, whose mother attempted to enroll him three (3) times at Booker T. Washington Senior High School in January 2016, at age 16. A staff member told his mother that he could not enroll because he was 16 years old and had not attained a sufficiently high education level. The second time, the same staff member told his mother that she was wasting her time as he was too old to enroll in school. The staff member suggested that he find a night school where he could take English classes and the GED test. During the third enrollment attempt, his mother was again told that he was too old to enroll. After further advocacy by SPLC with your office, he was eventually enrolled at Booker T. Washington Senior High School.

II. IMMIGRANT ELLs HAVE THE RIGHT TO ATTEND PUBLIC SCHOOL

The Florida Constitution guarantees a free public school education to all children in the state:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, *a paramount duty of the state to make adequate provision for the education of all children* residing within its borders. *Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools* that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Fla. Const. art. IX, § 1(a) (emphasis added); *Methelus v. Sch. Bd. of Collier Cty., Fla.*, 243 F. Supp. 3d 1266, 1271 (M.D. Fla. 2017) (“The Florida Constitution guarantees a free public school education to all children residing within its borders.”); *Anderson v. Hillsborough Cty. Sch. Bd.*, No. 808-CV-772-T-24TBM, 2009 WL 3669634, at *4 (M.D. Fla. Oct. 30, 2009), *aff’d*, 390 F.

App'x 902 (11th Cir. 2010) (noting that Florida provides constitutional and statutory right to education); *Bush v. Holmes*, 919 So.2d 392, 404 (Fla. 2006) (describing the Florida constitutional education mandate as a “maximum duty”). Public school education must be provided to students beyond the compulsory attendance age. *See Methelus*, 243 F. Supp. 3d at 1273 (“Florida guarantees free public education beyond age sixteen.”).

This right to attend free public schools has been codified in the Florida Statutes, which require that school systems “shall provide 13 consecutive years of instruction,” including to “limited English proficient students.” Fla. Stat. § 1000.01(4). The Florida Supreme Court has held that the “clear implication” of this provision is that “Florida residents have the right to attend this public school system for free.” *Scavella v. Sch. Bd. of Dade County*, 363 So. 2d 1095, 1098 (Fla. 1978).

The denial of enrollment to ELL immigrant children also violates Florida’s Educational Equity Act, which prohibits public schools from discriminating against students or employees on the basis of race, ethnicity or national origin. The law states that “[d]iscrimination on the basis of race, ethnicity, [or] national origin . . . against a student . . . in the state system of public K-20 education is prohibited.” Fla. Stat. §1000.05(2)(a). It also states that the “criteria for admission to a program or course shall not have the effect of restricting access by persons of a particular race, ethnicity, [or] national origin.” Fla. Stat. §1000.05(2)(b).

Thirty-five years ago in *Plyler v. Doe*, 457 U.S. 202 (1982), the United States Supreme Court held that children cannot be denied equal access to public education based on their immigration status. 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. *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).

The denial of enrollment to ELL immigrant children violates the Equal Educational Opportunities Act (EEOA), which requires that educational agencies take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f). Where a school district refuses to enroll minor children “in public school, [refers them] to noncredit Adult ESOL programs, [and fails] to assess their English and academic proficiency, and otherwise fail[s] to follow the District ELL Plan,” those children can state a civil claim for relief under the EEOA. *See Methelus*, 243 F. Supp. 3d 1266, at 1277.

ELL immigrant children, including those described above, have been denied enrollment at Miami-Dade Schools based on the assumption that they would be unable to succeed in a regular high school program due to their status as ELL students. This is not a permissible basis for making decisions about admission to public school. In relying on these criteria to deny admission, staff at Miami-Dade Schools restricts the access of foreign-born children to public schools, in violation of the Florida Educational Equity Act and federal law.

ELL immigrant children are entitled under state and federal law to enroll in and attend free public school. The ongoing, repeated, and systemic denial of enrollment to these children at various Miami-Dade Schools violates those rights.

III. CONCLUSION

Miami-Dade Schools should immediately enroll [REDACTED] and similarly-situated immigrant ELL children in high school. This is not only Miami-Dade Schools' legal obligation, but it is fully consistent with your public statements to immigrant children in the county that they are supported by the district and by you personally:

We have your back as an institution, myself personally as superintendent, our school board, our school system in a community of immigrants, that we are not going to turn our back on you. Your rights, in fact, are legally protected, and we have both a legal and moral responsibility to protect your interests and provide you a high-quality education, no questions asked.

See Carvalho Q&A. You have eloquently described how your experience of arriving in the United States as a teenager who did not speak English fluently informs your commitment to immigrant students in Miami-Dade Schools. *See id.* ("I'm an immigrant, I came to this country not speaking a word of English, I came from abject poverty, I came from an environment where my parents were not educated, I experienced being an undocumented teenager in America.").

We ask you to back up your words with action on behalf of students like [REDACTED]. Each day that these children are denied access to education results in irreparable harm to their future. *See Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1249 (11th Cir. 2012) (citing *Plyler v. Doe*, 457 U.S. 202, 221 (1982)) (holding that interference with the educational rights of "children is not a harm that can be compensated by monetary damages").

Please inform us by May 24, 2018 whether you will enroll [REDACTED] [REDACTED] [REDACTED] at South Dade Senior High School, and whether you will meet with SPLC to discuss how Miami-Dade County Public Schools can address the systemic issue of denial of enrollment to ELL children.

Yours truly,

/s/ Michelle Lapointe
Michelle Lapointe
Acting Deputy Legal Director
Southern Poverty Law Center

/s/ Viviana Bonilla López
Viviana Bonilla López
Law Fellow
Southern Poverty Law Center

cc: Nathalie Remelus, nremelus@dadeschools.net
Mary Lawson, mlawson@dadeschools.net
Luis M. Garcia, LMGarcia2@dadeschools.net

Exhibit A

2016-2017 Adult ESOL Enrollments in
Miami-Dade County

2016-17 Select District ESOL Enrollments

To provide meaningful results and to protect the privacy of individual students, data are displayed only when the total number of students in a group is at least 10 and when the performance of individuals would not be disclosed. Data for groups less than 10 are displayed with an asterisk ().

Masked cells are not included in the total.

District Number	District Name	School Number	School Name	Voc Program Code	Program Title	Total Enrolled	Age at Time of Enrollment			Gender		
							15	16	17	Male	Female	Unknown
13	Miami-Dade	7012	AMERICAN SENIOR HIGH ADULT EDUCATION	9900040	ESOL	1,333	0	2	19	14	7	NA
13	Miami-Dade	7072	CORAL GABLES SENIOR HIGH ADULT EDUCATION	9900040	ESOL	374	0	4	10	9	5	NA
13	Miami-Dade	7112	HIALEAH SENIOR HIGH ADULT EDUCATION CENTER	9900040	ESOL	1,248	0	8	30	20	18	NA
13	Miami-Dade	7132	HIALEAH-MIAMI LAKES SENIOR ADULT	9900040	ESOL	1,603	4	47	150	125	76	NA
13	Miami-Dade	7202	MIAMI BEACH ADULT & COMMUNITY ED CENTER	9900040	ESOL	3,203	2	32	72	83	23	NA
13	Miami-Dade	7272	MIAMI CORAL PARK HIGH ADULT EDUCATION	9900040	ESOL	3,342	4	50	172	125	101	NA
13	Miami-Dade	7342	MIAMI JACKSON SENIOR ADULT ED CENTER	9900040	ESOL	1,010	6	80	160	142	104	NA
13	Miami-Dade	7432	MIAMI PALMETTO SENIOR HIGH ADULT	9900040	ESOL	566	0	1	9	6	4	NA
13	Miami-Dade	7462	MIAMI SENIOR ADULT EDUCATION CENTER	9900040	ESOL	1,639	0	23	38	42	19	NA
13	Miami-Dade	7512	MIAMI SPRINGS SENIOR HIGH ADULT	9900040	ESOL	3,971	4	96	222	185	137	NA
13	Miami-Dade	7532	MIAMI SUNSET ADULT EDUCATION CENTER	9900040	ESOL	1,702	0	0	3	1	2	NA
13	Miami-Dade	7592	NORTH MIAMI SENIOR ADULT EDUCATION	9900040	ESOL	1,866	1	6	11	10	8	NA
13	Miami-Dade	7602	WILLIAM H. TURNER TECHNICAL ADULT	9900040	ESOL	205	0	1	10	7	4	NA
13	Miami-Dade	7602	WILLIAM H. TURNER TECHNICAL ADULT	9900050	ELCATE	*	*	*	*	*	*	NA
13	Miami-Dade	7702	SOUTH DADE TECHNICAL COLLEGE	9900040	ESOL	1,425	0	59	157	154	62	NA
13	Miami-Dade	7742	SOUTHWEST MIAMI ADULT & COMMUNITY EDUCATION	9900040	ESOL	556	1	12	26	26	13	NA
13	Miami-Dade	7841	THE ENGLISH CENTER	9900040	ESOL	3,887	0	34	78	62	50	NA
13	Miami-Dade	8005	LINDSEY HOPKINS TECHNICAL COLLEGE	9900040	ESOL	1,593	0	4	15	5	14	NA
13	Miami-Dade	8139	D.A. DORSEY TECHNICAL COLLEGE	9900040	ESOL	86	0	0	4	3	1	NA
13	Miami-Dade	8901	MIAMI LAKES EDUCATIONAL CENTER AND TECHNICAL	9900040	ESOL	52	0	0	1	0	1	NA
13	Miami-Dade	8911	ROBERT MORGAN EDUCATIONAL CENTER AND TECHNICAL	9900040	ESOL	1,558	0	9	52	31	30	NA
13	Miami-Dade	8911	ROBERT MORGAN EDUCATIONAL CENTER AND TECHNICAL	9900050	ELCATE	325	0	0	2	1	1	NA
							22	468	1,241			

*Unduplicated to the district, school, voc program code and student ID

ESOL_ENROLL_PERA3578.SAS:ESOL_ENROLL_PERA3578.XLSX:caa:03/05/18

Source: 1617 Workforce Development Information System Student Database

2016-17 Select College ESOL Enrollments

College	College	Course	Program Title	Total	Age at Time of			Gender		
					15	16	17	Male	Female	Unknown
15	Miami Dade	13104	ELCATE	1,034	0	0	4	2	2	0
15	Miami Dade	13204	ESOL	5,920	1	17	78	47	47	2
					1	17	82			

Source: 2017 FCS Student Database

*Unduplicated to the college, course_ics and psnid

ESOL_ENROLL_PERA3578.SAS:ESOL_ENROLL_PERA3578.XLSX:caa:03/05/18