



February 13, 2014

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Re: *CONSOLIDATED CIVIL RIGHTS COMPLAINT: C.V., on behalf of herself and all others similarly situated vs. Buncombe County Schools (Asheville, NC); and F.C., on behalf of himself and all others similarly situated vs. Union County Public Schools (Monroe, NC).*

Dear Superintendent Atkinson, Chairman Cobey, Lieutenant Governor Forest, & Treasurer Cowell:

Please find attached Complaints lodged today with the Department of Justice, Civil Rights Division, Educational Opportunities Section (“DOJ”), detailing the problem of discrimination against unaccompanied alien children<sup>1</sup> (“unaccompanied children”) in North Carolina public schools. As explained in detail in the Complaints and accompanying cover letter, a number of schools have expressly denied enrollment to Complainants, who are children entitled to attend public school. This practice violates

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<sup>1</sup> For background on unaccompanied alien children, see pages 2-4 of the Consolidated Complaint.

Title IV of the Civil Rights Act of 1964 (“Title IV”), 42 U.S.C. § 2000c, Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d, and Title VI’s implementing regulations, 34 C.F.R. pt. 100, and 28 C.F.R. § 42.104(b)(2). The Districts have also directly violated Complainants’ rights pursuant to the clear holding of *Plyler v. Doe*, 457 U.S. 202 (1982), which provides that a state may not deny access to public education to any child residing in the state on the basis of a child’s or parent’s immigration status.<sup>2</sup>

Even more troubling than these individual denials of education is the widespread nature of this problem across the state of North Carolina. As explained in the letter to DOJ, unaccompanied children under the age of twenty-one (21) are being turned away at the schoolhouse door for reasons such as immigration status, limited English proficiency, and age. Enrollment is also significantly delayed for many unaccompanied children due to inability to verify domiciles or prove that sponsors are legal guardians. Further, unaccompanied children and their sponsors are being discouraged from enrolling due to inadequate language access in schools and an unwelcoming, hostile environment. These practices are not being imposed on children born in the United States when they attempt to enroll in school.

These practices exclude unaccompanied children from receiving educational benefits on an equal basis in violation of Title IV’s and Title VI’s prohibition on national origin discrimination and also violate established state law. Under North Carolina law, all students under the age of twenty-one (21) are entitled to a public education in the district in which they are domiciled.<sup>3</sup> North Carolina law also prohibits discrimination in or exclusion from admission to public school on the basis of national origin.<sup>4</sup>

Due to the widespread nature of this problem in North Carolina, resolving only the discriminatory actions of the two Respondent Districts is not a complete solution. For this reason, in addition to any remedies achieved through DOJ involvement, Complainants seek action from the Department of Public Instruction (“DPI”) to put an end to this shameful practice statewide. No child present in North Carolina should be turned away from public school.

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<sup>2</sup> 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>.

<sup>3</sup> N.C. Gen. Stat. § 115C-366(a) (2011) (“All students under the age of 21 who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education.”).

<sup>4</sup> N.C. Gen. Stat. § 115C-367 (2011) (“No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin.”); see also *Leandro v. State*, 488 S.E.2d 249, 255 (1997) (concluding that North Carolina Constitution “guarantee[s] every child of this state an opportunity to receive a sound basic education in our public schools”).

We request that the North Carolina DPI—the agency charged with leading the public schools in the state—take all necessary steps to prevent this practice from occurring in the future. We are eager to work with the DPI to develop solutions to this troubling practice. Not one more student should be prevented from enrolling in school; therefore, we respectfully request your response by March 3, 2014.

Respectfully,



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Enclosures



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February 13, 2014

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Re: Letter Submitted in Support of:  
**CONSOLIDATED CIVIL RIGHTS COMPLAINT: C.V., on behalf of herself and all others similarly situated vs. Buncombe County Schools (Asheville, NC); and F.C., on behalf of himself and all others similarly situated vs. Union County Public Schools (Monroe, NC).**

Dear Chief Bhargava:

We represent children who have been denied, delayed, and discouraged in their attempt to access public education, and we file the attached consolidated civil rights complaint on their behalf with your agency. The present letter is submitted in support of the legal claims described in the consolidated complaint, and it is intended to provide additional context and to illustrate the broader problem of discrimination in North Carolina public schools against unaccompanied children—children who have come to the United States from another country without a parent or legal guardian to care for them.<sup>1</sup> These children are being turned away at the schoolhouse door because of their limited English proficiency, their age, and their national origin. These practices violate the nondiscrimination provisions of Title IV, Title VI and the clear holding of *Plyler v. Doe*.<sup>2</sup>

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<sup>1</sup> For background on unaccompanied children, see pages 2-4 of the Consolidated Complaint.

<sup>2</sup> 457 U.S. 202 (1982) (holding that a state may not deny access to public education to any child on the basis of the child or parent's immigration status); see also U.S. Dep't of Justice & U.S. Dep't of Ed., *Joint "Dear Colleague" Letter*, Ed.gov (May 6, 2011) [hereinafter "Joint 'Dear Colleague' Letter"], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>.

Advocates from two North Carolina-based organizations that represent Complainants have first-hand experience with unaccompanied children and those who have been entrusted with their care, known as sponsors. Sponsors are required to ensure that the child is enrolled in school. In North Carolina, however, unaccompanied children are being prevented from enrolling in school. Sponsors consistently report difficulty enrolling their unaccompanied children in public school; however, most of these children are unwilling or unable to come forward and complain about the denial to the federal government. As such, Complainants bring the attached consolidated complaint on behalf of similarly situated currently-classified, formerly-classified, and future unaccompanied children in their respective school districts. Absent systemic change, the widespread denial or delay of education to unaccompanied children in North Carolina will persist.

### **DENIAL, DELAY, AND DISCOURAGEMENT OF EDUCATION TO UNACCOMPANIED CHILDREN IS WIDESPREAD IN NORTH CAROLINA**

Despite federal and state law requiring that education be available to all children present in North Carolina on an equal basis, unaccompanied children are being denied enrollment, delayed from enrolling, and discouraged from enrolling in North Carolina public schools. While only two Complainants have come forward, the experiences of two North Carolina advocates for children, as set forth below, demonstrate the widespread nature of these practices.

Danielle Hilton is a Project Coordinator within the Immigrant Justice Program at Legal Services of Southern Piedmont (“LSSP”) in Charlotte, North Carolina. LSSP utilizes direct legal services, community outreach and education, and systemic advocacy to ensure indigent and low-income people, including immigrants, have access to justice. Unaccompanied children and their sponsors constitute a recognizable plurality of the immigrants LSSP serves. Prior to joining LSSP, Hilton worked as the Immigrant Outreach Specialist and Coordinator for the United States Department of Justice Legal Assistance for Victims grant in Charlotte. In this role, she coordinated services for victims of domestic violence, helped them navigate the restraining order process in civil courts, and facilitated trainings within the legal community to educate attorneys about immigration petitions related to victims of domestic violence, including children. Hilton further trained social service providers in order to make social service programs more accessible to immigrants.

At LSSP, Hilton applies these same skills in helping unaccompanied minors and their sponsors navigate the sponsorship requirements to ensure the unaccompanied child’s safety and well-being. Through partnerships with similarly situated organizations across the country, sponsors can be referred directly to LSSP after an unaccompanied child has been placed in the sponsor’s care. The largest referral site is based along the United States-Mexico border in Harlingen, Texas. Hilton’s first point of contact with

sponsors usually takes place when they agree to assume sponsorship of the unaccompanied child.

To facilitate the education mission of LSSP, Hilton helps prepare sponsors to meet their responsibilities and brings resources that will promote the welfare of the child to their attention. In 2012, LSSP received roughly thirty (30) sponsor referrals per month for unaccompanied children living in North Carolina and South Carolina. In 2013, Hilton saw that number increase more than threefold to approximately 100 sponsor referrals per month. Over this same period, Hilton can corroborate government data and media reports that the incoming unaccompanied children population is getting younger. In 2012, the average unaccompanied minor was sixteen (16) years old; in 2013, the average age was twelve (12) years old.

One of the most difficult obstacles sponsors and unaccompanied children face is enrolling the child in school. Since she began working with this population at LSSP, Hilton has encountered scores of unaccompanied children who have been denied enrollment at North Carolina public schools. Hilton typically learns of these denials from sponsors and from LSSP attorneys who conduct regular pro bono screenings for unaccompanied children at the Charlotte Immigration Court. She estimates that about five percent of the children she encountered in 2013—or roughly 60 individuals—were denied enrollment in school. These numbers are likely not telling the whole story; Hilton believes that dozens more children are being denied, but that she is not hearing about it because sponsors choose not to bring the issue to Hilton’s attention. Hilton notes that lack of language access services for sponsors who are limited-English-proficient and unwelcoming school environments may be to blame for sponsors giving up on the enrollment process.

When sponsors do contact Hilton about a denial of education, the basis for denial most commonly given by the school is the child’s age. Schools insist that the child is too old to be placed in the grade for which he or she is academically appropriate or that the child does not have enough credits to graduate on time. All of the children Hilton has encountered who received this denial were under age twenty-one (21). Other reasons cited for denying enrollment include the sponsor’s inability to prove that he or she is the child’s legal guardian or the sponsor’s inability to provide sufficient proof of address. In many cases, while there is no explicit denial of enrollment, the combined lack of language access services at the school, the complex paperwork given only in English, misleading information, and excessive wait times to receive responses from school staff effectively deny unaccompanied children enrollment. In some rare cases, schools will explicitly cite the child’s national origin or immigration status as a basis for denial. Hilton notes that though the matter was ultimately resolved by the school’s principal in Pisgah County, a school administrator initially said that she would not enroll “kids from another country.” Hilton also reports hearing about schools denying unaccompanied children a seat in the classroom because of their ongoing involvement with immigration

proceedings. One administrator noted that she did not want a child who was in immigration court “mixing with the other students.”

Matt Ellinwood is a policy analyst and attorney with the North Carolina Justice Center’s Education and Law Project (“ELP”) in Raleigh, North Carolina. In this role, Ellinwood works to ensure that all children in North Carolina have equal and fair access to public education, that all parents have the information and access they need to participate in their children’s educations, and that public schools secure the funding needed to provide a high-quality education to every child.

In Ellinwood’s experience advocating for children in North Carolina, only unaccompanied children who have come to the school from another country are turned away for being “too old to enroll.” In Ellinwood’s experience, this is not an unusual experience for unaccompanied children in North Carolina. Unaccompanied children who are the appropriate age to be eligible to enroll in school have been denied enrollment in some cases and faced significant delays in others because they do not have enough credits to be placed in the grade that generally corresponds to their age. Similarly, unaccompanied minors who do have enough credits but lack the ability to speak English well enough to participate at the grade-level they attained in another country, have faced significant delays in enrolling in school. These denials and delays are clearly pretextual because only children born in other countries who speak languages other than English face this barrier to enrollment even though there are children from all walks of life who are behind in terms of the number of credits they have attained or who have special educational needs that have no difficulty registering.

In Hilton’s experience, notifications denying enrollment to unaccompanied children are informal and difficult to document. Most denials come verbally from a school’s administrative staff. In several instances, Hilton has made attempts to follow up on a denial of enrollment with school administration. In most cases, the principal will justify the decision by pointing to the bases outlined above and seldom will the decision be overturned. In other cases, Hilton will be referred to the school district’s legal team with similar results. Even with this follow-up, Hilton and the sponsors with whom she regularly deals find it difficult to secure written, language-appropriate explanations for enrollment decisions. In addition, schools rarely provide unaccompanied children with resources apprising them of their post-denial alternatives for furthering their education.

Following a denial, unaccompanied children rarely take action to complain about this practice beyond seeking Hilton’s assistance. According to Hilton, this is largely due to the temporary, and sometimes transient, nature of the unaccompanied child’s stay in North Carolina; overriding fear of potential immigration consequences; and unfamiliarity with the resources in place to help vindicate their rights. Further, Hilton notes that many unaccompanied children are treated as adults in their home countries so encounters with schools not well-versed in these cultural competencies often leave boys—who consider



themselves men—feeling emasculated, and girls—who consider themselves women—feeling insulted. These cultural competencies also place pressures on unaccompanied children to support their families back home—forcing them to seek low-wage jobs after a denial of enrollment as opposed to continuing to fight to be in school.

North Carolina schools have not only denied unaccompanied children their right to an education outright, they have also placed numerous obstacles before those seeking to enroll. In Ellinwood’s experience advocating on behalf of unaccompanied children, the systemic obstacles facing unaccompanied children—even if ultimately overcome—temporarily deny the child’s right to an education and discourage the child’s desire to pursue an education. As a result, when these children are ultimately enrolled in school, they start weeks or months behind their peers facing a life-changing educational deficit that can be difficult if not impossible to overcome. These delays constitute an artificial barrier to enrollment that damages the quality of education that unaccompanied children receive in North Carolina.

In Ellinwood’s experience, unaccompanied children must complete far more complex and time-consuming paperwork than other students and frequently have more difficulty retrieving the documentation required to register than do their peers when attempting to register for school. Rather than enrolling these children while these various forms of documentation are being gathered, as mandated by the North Carolina Department of Public Instruction,<sup>3</sup> districts generally deny enrollment until all required documentation has been submitted, regardless of how difficult that documentation may be for the student to retrieve. In the case of proving the child’s age, schools commonly *only* accept a birth certificate and frequently require a certified copy. In addition to the initial chilling effect this can have on children who do not have their birth certificates readily available, obtaining an unaccompanied child’s birth certificate is especially time-consuming and complicated since he or she was born outside of the United States. Again, rather than enrolling students while the birth certificate is being retrieved or accepting alternate documentation to prove age, districts regularly bar the child’s enrollment until the birth certificate arrives.

Another basis upon which schools in North Carolina delay or discourage enrollment of unaccompanied children is an inability to establish domicile. In many cases, unaccompanied children do not live with their parents, and under North Carolina law, the domicile for minors under eighteen (18) years old is presumed to be that of their parents. As such, unaccompanied children must go through lengthy custody proceedings, provide documentation that they are homeless or in foster care, or establish that they qualify for one of the hardship exemptions to the domicile requirement in order to

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<sup>3</sup> Letter from June St. Clair Atkinson, State Superintendent, Public Schools of North Carolina, to Superintendents (Aug. 10, 2011) (explaining that students may not be denied access to school while school validates documentation), [http://www.nc-sis.org/documents/email\\_bulletins/Admission\\_Enrollment\\_Practices\\_Requirements.pdf](http://www.nc-sis.org/documents/email_bulletins/Admission_Enrollment_Practices_Requirements.pdf).

register. Each of these options can take months to accomplish, which leads to substantial delays, the loss of educational services for many unaccompanied children, and the discouragement from attempting to register for school altogether.

Custody proceedings are not an option for unaccompanied youth whose parents are temporarily unable to care for them, but who do not want to lose legal custody of their children. Under North Carolina law, students in this situation can register by filling out affidavits that establish they are living with a caregiver adult under one of the hardship exemptions to the domicile requirement. *See* N.C. Gen. Stat. § 115C-366(a3) (2011). Yet, in Ellinwood’s experience, school districts usually incorrectly inform unaccompanied children and their sponsors in this situation that they must obtain a formal custody agreement in court to register. Even if they do become aware of the caregiver adult option, the process of filling out affidavits is time-consuming and difficult to accomplish without legal assistance. This functions as a bar to enrollment while this documentation is being completed and an absolute bar to enrollment for unaccompanied minors who are unable to complete these forms.

Both Hilton and Ellinwood see a number of practices that have the effect of chilling or discouraging unaccompanied children from attempting to enroll or following through with the enrollment process. Schools sometimes require Social Security numbers to enroll, and this practice is against federal guidance.<sup>4</sup> Sponsors also report little or no language access and a resulting inability to communicate with school staff including an inability to read and understand enrollment documents. Federal law stipulates that districts should make clear that provision of Social Security numbers must be optional and that the district must state the statutory basis for asking for Social Security numbers. Many unaccompanied children are denied access to education because of this state-imposed requirement. Most alarmingly, unaccompanied children and their sponsors often report a hostile environment where they are made to feel unwelcome and unwanted in their neighborhood schools.

The issues Hilton and Ellinwood highlight are not limited to the pages of the attached complaints or to the Complainants’ individual experiences; indeed, they speak to the collective experience of at least one hundred unaccompanied children across North Carolina each year who have been denied the right to an education and the rich opportunities that flow from that right.

Widespread denials, delays, and discouragement of the right to an education by school officials in North Carolina warrant investigation beyond the individual denials of Complainants to ensure that no child present in the state has his or her right to an

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<sup>4</sup> Joint “Dear Colleague” Letter, *supra* note 2. 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. *Id.* (citing 5 U.S.C. § 522a).

education denied, delayed, or discouraged. If unaccompanied children continue to face the outright and constructive denial of the right to an education, these children are at risk of failing to succeed in all other areas of life.

Respectfully,



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February 13, 2014

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**Re: CONSOLIDATED CIVIL RIGHTS COMPLAINT: C.V., on behalf of herself and all others similarly situated vs. Buncombe County Schools (Asheville, NC); and F.C., on behalf of himself and all others similarly situated vs. Union County Public Schools (Monroe, NC).**

Dear Chief Bhargava:

This is a consolidated civil rights complaint filed on behalf of two children who were recently classified as unaccompanied alien children (“unaccompanied child”), but have subsequently reached the age of majority, against Buncombe County Schools (Asheville, North Carolina), and Union County Public Schools (Monroe, North Carolina), collectively, “the Districts.”<sup>1</sup> Complainants allege that the Districts have discriminated against them on the basis of national origin and have engaged in discriminatory practices in violation of their obligations under Title IV of the Civil Rights Act of 1964 (“Title IV”), 42 U.S.C. § 2000c, Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d, and its implementing regulations at 34 C.F.R. § 100.3(b)(2), and 28 C.F.R. § 42.104(b)(2). Complainants also allege that the Districts have directly violated their rights contrary to *Plyler v. Doe*, 457 U.S. 202 (1982), which clearly held that a state may

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<sup>1</sup> The contact information for the Districts is as follows: Union County Public Schools, 400 North Church St., Monroe, NC 28112, Phone: 704-296-9898, Fax: 704-282-2171; Buncombe County Schools, Administrative Services Building, 175 Bingham Road, Asheville, NC 28806, Phone: (828) 255-5921; Fax: (828) 255-5923.

not deny a child access to an otherwise available public education on the basis of the child's or parent's immigration status.<sup>2</sup>

Complainants<sup>3</sup> file these Complaints in their individual capacity and on behalf of all other similarly situated currently-classified, formerly-classified, and future unaccompanied alien children under the age of twenty-one (21) domiciled in the Districts.<sup>4</sup>

As set forth below, Complainants allege that a school or schools in the Districts refused to enroll them despite the Districts' legal obligation to do so. The Districts have denied or delayed Complainants the right to enroll based on their national origin in violation of Title IV, Title VI, and the clear holding of *Plyler*. The actions of the Districts have resulted in a denial of Complainants' right to equal access of education in violation of federal law.

### **STATEMENT OF JURISDICTION**

The United States Department of Justice has authority to investigate violations and enforce the provisions of Title IV and Title VI of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000c *et seq.*, 2000d *et seq.* (2011). The Districts are recipients of federal financial assistance and are therefore subject to the anti-discrimination prohibitions of Title IV and Title VI. Title IV prohibits discrimination, including harassment, based on national origin by public elementary and secondary schools and public institutions of higher learning. *Id.* § 2000c-6. Title VI prohibits discrimination on the basis of national origin in programs or activities receiving federal financial assistance. *Id.* § 2000d. Complainants have not filed a lawsuit raising these claims in state or federal court. These Complaints have not been investigated by another federal, state, or local civil rights agency or through any internal grievance procedures, including due process proceedings.

### **BACKGROUND ON UNACCOMPANIED ALIEN CHILDREN**

An unaccompanied alien child is a child under eighteen (18) years of age present in the United States without lawful immigration status and without a parent or legal

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<sup>2</sup> See U.S. Dep't of Justice & U.S. Dep't of Educ., *Joint "Dear Colleague" Letter*, Ed.gov (May 6, 2011) [hereinafter "Joint 'Dear Colleague' Letter"], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.pdf>.

<sup>3</sup> See Exhibit 1 for name, contact information and consent for use of individual information for Complainants.

<sup>4</sup> N.C. Gen. Stat. § 115C-366(a) (2011) states in part: "All students under the age of 21 who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education." Children as young as the age of five can start kindergarten. See N.C. Gen. Stat. § 115C-364 (2011).

guardian in the United States to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2). Once detained, unaccompanied children are placed under the care of the Office of Refugee Resettlement (“ORR”), in the Administration for Children and Families, a division of the United States Department of Health and Human Services. 6 U.S.C. § 279(a).

According to ORR, unaccompanied children typically leave their home countries to join family already in the United States; to escape violence, abuse, persecution or exploitation in their home country; to seek employment or educational opportunities in the United States to support themselves or their families; or because they were brought into the United States by human trafficking rings.<sup>5</sup> Until recently, the average number of unaccompanied children served by ORR each year was between 7,000 and 8,000.<sup>6</sup> In fiscal year 2012, that number nearly doubled when ORR served 13,625 children. The increase in unaccompanied children entering the United States more than doubled again in fiscal year 2013: ORR served 24,668 children who were apprehended by the U.S. Department of Homeland Security. For the coming year, ORR estimates that upwards of 60,000 unaccompanied children will enter the United States.<sup>7</sup>

In addition to increased numbers of unaccompanied children entering the United States, the demographics of these youth are also changing. More female children are traveling to the United States<sup>8</sup> due to increasing gender-based violence in Central America.<sup>9</sup> Children are also entering the United States at younger ages.<sup>10</sup> The home countries of the children served by ORR in FY 2013 were primarily Guatemala (37%), El

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<sup>5</sup> *Fact Sheet, U.S. Dep’t of Human Servs., Admin. for Children & Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program*, Admin. for Children & Families 1 (Dec. 2013) [hereinafter “UAC Fact Sheet”], [http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied\\_childrens\\_services\\_fact\\_sheet.pdf](http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf); *see also* Nat’l Immigrant Justice Ctr., *Unaccompanied Immigrant Children: Vulnerable Children Face Insurmountable Obstacles*, Nat’l Immigrant Just. Center, 2 (Jan. 2014), <http://immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20Policy%20Brief%20-%20Unaccompanied%20Immigrant%20Children%20FINAL%20Winter%202014.pdf>.

<sup>6</sup> UAC Fact Sheet, *supra* note 5.

<sup>7</sup> Joel Millman & Miriam Jordan, *Flow of Unaccompanied Minors Tests U.S. Immigration Agencies*, WALL ST. J. (Jan. 29, 2014), <http://online.wsj.com/news/articles/SB10001424052702303743604579351143226055538>.

<sup>8</sup> Office of Refugee Resettlement, *About Unaccompanied Children’s Services*, Admin. for Children & Families, <http://www.acf.hhs.gov/programs/orr/programs/ucs/about> (last visited Jan. 8, 2014) (noting that from FY 2012 to FY 2013, female UACs rose from 23% to 27%).

<sup>9</sup> Lutheran Immigration and Refugee Service, *Protecting Unaccompanied Migrant Children: Backgrounder*, Refugee Council USA, 2 (2012), <http://www.rcusa.org/uploads/pdfs/LIRS-Backgrounder-on-Unaccompanied-Migrant-Children-12-2012.pdf>.

<sup>10</sup> *About Unaccompanied Children’s Services*, *supra* note 8 (noting that from FY 2012 to FY 2013, UACs under the age of 14 increased from 17% to 24%).

Salvador (26%), and Honduras (30%).<sup>11</sup> Unaccompanied children are an especially vulnerable population due to their youth, their separation from parents and relatives, and the hazardous journey they endure to reach the United States.<sup>12</sup> They are at risk for human trafficking, exploitation, and abuse.<sup>13</sup>

Once an unaccompanied child is referred to ORR from another federal agency, usually one within the United States Department of Homeland Security, he or she is placed “in the least restrictive setting that is in the best interest of the child . . . .” 8 U.S.C. § 1232(c)(2)(A). This is usually with a state-licensed care provider that provides classroom education, mental and medical health services, case management, socialization and recreation, and family reunification services.<sup>14</sup> Care providers will facilitate safe and timely release of the unaccompanied children to family members or sponsors who can care for them.<sup>15</sup> Sponsors are responsible for caring for the unaccompanied child, including ensuring that the child is enrolled in school.<sup>16</sup>

## COMPLAINANTS’ STATEMENT OF FACT

### *C.V. vs. Buncombe County Schools*

C.V. was recently<sup>17</sup> classified as an unaccompanied child and resides with her cousin and sponsor, E.H., in the Buncombe County School District. C.V. and E.H. are native Spanish speakers and understand little or no English.

C.V. was born in Honduras on January 17, 1996, and lives with E.H. in Arden, North Carolina. C.V.’s parents live in Villa Union, Honduras, where C.V. lived with her two younger sisters until she left Honduras for the United States on September 16, 2012. While in Honduras, C.V. completed sixth grade and started seventh grade. In Honduras, she loved to study; Spanish was her favorite subject because she got to read stories about leaders and people of the world. Her favorite class was physical education because she enjoyed playing soccer with her friends. Because she was needed to care for her sisters during the day, C.V. had to attend school in the evenings. Young women in the area were being violated by men at night and the journey to school put C.V. at risk. When it became

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<sup>11</sup> UAC Fact Sheet, *supra* note 5, at 1-2. The remaining UACs came from Mexico (3%), Ecuador (2%), and Other (3%). *Id.* at 2. This breakdown per country has remained relatively constant over the years. *Id.*

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Office of Refugee Resettlement, Div. of Children’s Servs., *Sponsor Handbook*, Admin. for Children & Families 1 (2012), [http://www.acf.hhs.gov/sites/default/files/orr/sponsor\\_handbook.pdf](http://www.acf.hhs.gov/sites/default/files/orr/sponsor_handbook.pdf). Sponsors are responsible for the unaccompanied child until the child reaches the age of majority or until the conclusion of the child’s immigration court proceedings.

<sup>17</sup> C.V. turned 18 on Jan. 17, 2014.

too dangerous for her to walk to school in the evening, C.V. stopped going to school. She was sixteen years old at the time.

C.V. left home for the United States on September 16, 2012, at the age of sixteen (16). Once she reached the United States after crossing the Rio Grande River, on September 30, 2012, United States Customs and Border Protection officers apprehended and detained her while she was resting in the Texas desert. She was then transferred to the custody of ORR and placed in an unaccompanied minor refugee center in San Antonio, Texas, where she remained for six months. While in ORR custody, C.V. attended school and was allowed two ten-minute phone calls per week to speak with her mother in Honduras. Eventually, C.V.'s mother located E.H. in North Carolina. C.V. was released into E.H.'s custody on March 8, 2013, and now resides with E.H., E.H.'s husband, and their two children. As C.V.'s sponsor, E.H. was designated by ORR to be responsible for providing food, housing, healthcare, and ensuring that C.V. is enrolled in school. E.H. has lived in North Carolina for nine years.

On April 1, 2013, E.H. called Beatriz Riascos, School/Family Support Specialist in the Buncombe County Schools Title III/English as a Second Language (ESL) Program.<sup>18</sup> E.H. was told by a friend that Ms. Riascos was the person to contact about enrolling C.V. in school because Ms. Riascos speaks Spanish. During the call, Ms. Riascos requested C.V.'s records, including C.V.'s birth certificate and previous school records. E.H. sent Ms. Riascos all of C.V.'s records, which included her school records from Honduras and a record of her time spent in ORR detention in San Antonio. The detention record shows that C.V. attended classes in science, social studies, math, reading, physical education, Spanish, and ESL English. Her final grades in those classes ranged from eighty (80) to 100 percent.

Ms. Riascos called a week later and informed E.H. that, although she was only seventeen (17) years old, C.V. would be prohibited from enrolling in high school due to her age. Based on C.V.'s school records, Ms. Riascos stated that C.V. would only qualify for a middle school placement, but that she was too old for a middle school class. She was therefore denied admission to school altogether. Ms. Riascos did not offer any additional information as to why the high school would not accept a seventeen (17) year old.

After she was denied access to school, C.V. filled her days by spending time with her family, riding her bike, reading, and helping with chores around the house.

On October 1, 2013, C.V. tried to enroll in school again, this time at Valley Springs Middle School. Although located in Arden, North Carolina, the Valley Springs

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<sup>18</sup> Buncombe Cnty. Schs., *Translation and Interpretation Procedures*, Buncombe County Schs., <http://www.buncombe.k12.nc.us/Page/203> (last visited Jan. 23, 2014).



Middle School is also in the Buncombe County School district. The school counselor, speaking to E.H. and C.V. through a bilingual teacher, did not ask for any documents and did not provide E.H. and C.V. with enrollment paperwork. Instead, the counselor denied C.V.'s request for enrollment, stating that C.V. was too old to be in middle school and that she was too old to complete the number of credits required to graduate on time. The school provided no written denial or support for the decision to deny C.V. enrollment, but instead they referred C.V. to a General Education Development (GED) program. C.V. has decided not to study for the GED because she still hopes to enroll in high school where she can finish her studies and graduate with a high school diploma. C.V. has missed almost four months of school as a result of the District's denial.

Learning English and getting an education is important to C.V., so she is currently enrolled in a free English as a Second Language course at Blue Ridge Community College. The course serves children and adults. C.V. hopes to attend cosmetology school after graduating from high school. Being denied access to school made C.V. feel singled out and ashamed. C.V. still believes that all young people should be afforded the opportunity to attend school no matter the country in which they were born.

#### *F.C. vs. Union County Public Schools*

F.C. was recently<sup>19</sup> classified as an unaccompanied child and resides with his mother/sponsor, S.C., and father in the Union County School District. F.C. and his parents are native Spanish speakers and understand little or no English.

F.C. was born in Guatemala on August 21, 1995, and lives with his parents in Marshville, North Carolina. F.C. came to the United States in April 2013 when he was seventeen (17) years old. F.C.'s mother, S.C., came to the United States in 2003, when F.C. was eight (8) years old, and his father came in 2005, when F.C. was ten (10) years old. F.C.'s parents have resided in Marshville, North Carolina, since 2003 and 2005. F.C. was raised by his maternal grandmother from the age of eight (8). While in Guatemala, F.C. attended school, taking classes in Spanish, social studies, history, science, and physical education. F.C. came to the United States to reunite with his parents and further his education so he could have a successful life. F.C. sought to escape a country full of crime, poverty, and gangs.

F.C. was apprehended by United States Customs and Border Protection on May 16, 2013, in the Tucson, Arizona, desert and transferred to the custody of ORR and placed in an unaccompanied minor detention center in Grand Rapids, Michigan. There, F.C. took classes in math, dance, science, Spanish, and music. F.C. was released into the custody of his mother on May 30, 2013. S.C. is F.C.'s official sponsor; she was

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<sup>19</sup> F.C. turned 18 on Aug. 21, 2013.

designated by ORR to be responsible for meeting his basic needs including food, housing, healthcare, and ensuring that F.C. is enrolled in school.

Shortly after F.C. was released into her custody—likely the week of June 3, 2013<sup>20</sup>—S.C. tried to enroll F.C. in Forest Hills High School in Marshville, North Carolina. Forest Hills High School is in the Union County Public School district. F.C. was seventeen (17) years old at the time. Speaking to S.C. in Spanish, the school secretary asked F.C.’s age and told S.C. that F.C. was too old to enroll in school. The secretary did not mention why seventeen (17) was too old to enroll in school, nor did she request F.C.’s records from previous schools or any other documents. Instead, she referred S.C. to the South Piedmont Community College (“SPCC”) Adult Education Program where F.C. could get his GED. S.C. took F.C. to the community college to sign him up, but the program rejected him because he was too young. An employee at the community college told S.C. to go back to the high school and try to enroll F.C. again. They informed S.C. that if the school still refused to enroll him, then SPCC would accept F.C.

S.C. returned to Forest Hills High School during the week of June 24th to enroll F.C., insisting that he had a right to enroll in school. Although F.C. was not informed of any summer school opportunities at Forest Hills High School, high schools in Union County Public Schools offer various summer classes for students who need to make up certain courses for completion of a grade or who wish to complete new courses over the summer.<sup>21</sup> The same secretary they had spoken with before gave S.C. registration forms and the phone number to the ESL office and told S.C. to schedule F.C. for an ESL examination. Instead of enrolling F.C. at that time and scheduling the ESL examination for a later date, the secretary told S.C. that F.C. would not be enrolled until *after* he took the ESL examination.

The ESL examination was scheduled for July 30, 2013. On that date, F.C. was administered the examination, but since he knows no English, and the examination was entirely in English, he could not complete any of the examination. The person administering the test, who spoke to F.C. in Spanish, told F.C. he did not have to complete the examination after all. With the help of the ESL examination administrator, F.C. filled out and submitted an enrollment application. F.C. started taking classes at Forest Hills High School on August 26, 2013.

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<sup>20</sup> S.C. does not remember precisely the date on which she first attempted to enroll F.C. in school. She remembers that she did not wait a week after his release and that there were children present at the school when she took him to enroll. F.C. was released on Thursday, May 30. Classes ended at Forest Hills High School on Friday June 7, 2013.

<sup>21</sup> Union Cnty. Pub. Schs., *2012-2013 Program of Studies*, Union County Pub. Schs. 18 (2012), [http://seced.ucps.k12.nc.us/documents/2012-13\\_pos.pdf](http://seced.ucps.k12.nc.us/documents/2012-13_pos.pdf).

F.C. feels upset that it was so difficult and took so long to enroll in school. When F.C. came to the United States, he dreamed of attending school and continuing his studies; he was disappointed that it was so difficult for him to be accepted at his school. F.C. is grateful for his supportive parents and hopes to study hard and graduate from high school. He also hopes to go to college. S.C. wants F.C. to work hard so he does not have to struggle as much as she has struggled. Despite the significant delay, F.C. has been doing his best to do well in school since he started in August.

## CLAIMS

### I. The Districts Have Denied and Delayed Complainants' Enrollment Based on National Origin in Violation of Title IV, Title VI, and the Clear Holding of *Plyler v. Doe*.

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. Nor may recipients unjustifiably utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination.<sup>22</sup> Title IV also protects against discrimination on the basis of national origin in public elementary and secondary schools. 42 U.S.C. § 2000c-6.

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 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). 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 made clear 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.<sup>23</sup>

Under North Carolina law, all students under the age of twenty-one (21) are entitled to a public education in the district in which they are domiciled.<sup>24</sup> North Carolina

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<sup>22</sup> 42 U.S.C. § 2000d-1 (2011); 34 C.F.R. § 100.3(b)(2) (2013); *see also* Joint "Dear Colleague" Letter, *supra* note 2.

<sup>23</sup> Joint "Dear Colleague" Letter, *supra* note 2.

<sup>24</sup> N.C. Gen. Stat. § 115C-366(a) ("All students under the age of 21 who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high

law also prohibits discrimination in or exclusion from admission in public school on the basis of national origin.<sup>25</sup> Any policy or practice that requires students to be a certain age to enroll would violate state law. Indeed, there are neither state nor Respondent District policies requiring students to be able to graduate on time to be enrolled; nor are there policies requiring students enrolling for the first time in the district to have met a certain academic level for their age to be eligible for enrollment. Further, neither North Carolina nor Respondent Districts have a policy requiring students to demonstrate a certain level of English proficiency to be eligible for enrollment; such a requirement would contravene federal, state, and district policy against discrimination on the basis of national origin. On the contrary, pursuant to Title IV and Title VI, among other federal nondiscrimination laws, each Respondent District maintains a policy that expressly prohibits discrimination on the basis of race, color, national origin, sex, disability, or age and explicitly states that the District will not tolerate discrimination in any of its educational programs.<sup>26</sup>

Employees in each Respondent District violated state and federal law by denying Complainants' admission to school. Complainants are under twenty-one (21) years old and are domiciled in their Districts; they are therefore eligible for enrollment. Both schools in Buncombe County School District cited C.V.'s age when they denied her admission. Forest Hills High School cited F.C.'s age when they first denied his admission. Yet, denying enrollment on the basis of age when the student is under twenty-one (21) and otherwise meets the criteria for admission is against state law. Accordingly, public schools have no legal justification for declaring that a twenty-one year-old is "too old to enroll." Rather, a school relying on such an age-based claim is using it as a pretext for excluding Complainants based on their national origin.

Matt Ellinwood,<sup>27</sup> counsel for Complainants, has experience that demonstrates how age is used as a pretext for denying enrollment based on national origin or limited English proficiency. In Ellinwood's experience advocating on behalf of children in North Carolina, including unaccompanied children, only unaccompanied children who have

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school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education."); *see also Leandro v. State*, 488 S.E.2d 249, 255 (1997) (concluding that North Carolina Constitution "guarantee[s] every child of this state an opportunity to receive a sound basic education in our public schools").

<sup>25</sup> N.C. Gen. Stat. § 115C-367 (2011) ("No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin.").

<sup>26</sup> Buncombe Cnty. Schs., *Prohibition against Discrimination, Harassment and Bullying: Policy 1710/4021/7230*, Buncombe County Schs. 1, 5 (April 11, 2013),

[http://www.buncombe.k12.nc.us/cms/lib5/NC01000308/Centricity/Domain/7/1710\\_4021\\_7230%20Prohibition%20of%20Discrimination%20Harassment%20and%20Bullying.pdf](http://www.buncombe.k12.nc.us/cms/lib5/NC01000308/Centricity/Domain/7/1710_4021_7230%20Prohibition%20of%20Discrimination%20Harassment%20and%20Bullying.pdf); Union Cnty. Bd. of Educ., *Prohibition against Unlawful Discrimination, Harassment, Bullying (Students): Policy 4-7*, Union County Pub. Schs. 1 (revised Dec. 8, 2009),

[https://boe.ucps.k12.nc.us/policy\\_manual/policy\\_show.php?policy\\_id=112](https://boe.ucps.k12.nc.us/policy_manual/policy_show.php?policy_id=112).

<sup>27</sup> Ellinwood is a policy analyst and attorney with the North Carolina Justice Center's Education and Law Project in Raleigh, North Carolina.

come to the school from another country are turned away for being “too old to enroll.” Unaccompanied children who are the appropriate age to be eligible to enroll in school, like Complainants, have been denied enrollment in some cases and faced significant delays in others because they do not have enough credits to be placed in the grade that generally corresponds to their age. Similarly, unaccompanied minors who do have enough credits but lack the ability to speak English well enough to participate at the grade-level they attained in another country have faced significant delays in enrolling in school. These denials and delays are clearly pretextual because only children born in other countries who speak languages other than English face this barrier to enrollment even though there are children from all walks of life who are behind in terms of the number of credits they have attained or who have special educational needs that have no difficulty registering. Denying enrollment to C.V. and F.C. based on their national origin in this manner violates the nondiscrimination provisions of Title IV and Title VI.

Employees of Union County Public School District also violated state and federal law by conditioning F.C.’s enrollment in school on completion of an English proficiency exam. The protections provided by Title VI and its implementing regulations have been interpreted to extend to students with limited English proficiency.<sup>28</sup> School districts are thus required to provide national origin minority LEP students with educational benefits and opportunities equal to those provided to other students.<sup>29</sup> This includes the right to enroll in school. Conditioning F.C.’s enrollment on taking an English proficiency exam also amounts to prohibited national origin discrimination under Title VI. F.C. was singled out as a Spanish speaker and required to complete an English proficiency exam *before* he could enroll. This is not a requirement placed on every child seeking to enroll in the District;<sup>30</sup> its imposition on F.C. is behavior prohibited by Title VI.

As children present in their Districts, Complainants are entitled to attend public school. Because of the Buncombe County Schools’ denial, C.V. has been prevented from

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<sup>28</sup> *Lau v. Nichols*, 414 U.S. 563, 568 (1974); *Castaneda v. Pickard*, 648 F.2d 989, 1006 (5th Cir. 1981); *see also* Office for Civil Rights, U.S. Dep’t of Educ., *Policy Update on Schools’ Obligations Toward National Origin Minority Students with Limited-English Proficiency (LEP students)*, Ed.gov (Sept. 27, 1991) (hereinafter “Sept. 1991 Policy Memo”), <http://www2.ed.gov/about/offices/list/ocr/docs/lau1991.html>; Office for Civil Rights, U.S. Dep’t of Educ., *Office for Civil Rights Policy Regarding the Treatment of National Origin Minority Students Who are Limited English Proficient*, Ed.gov (Apr. 6, 1990) (reissuing OCR’s Dec. 3, 1985 Title VI Language Minority Compliance Procedures), *available at* [http://www2.ed.gov/about/offices/list/ocr/docs/lau1990\\_and\\_1985.html](http://www2.ed.gov/about/offices/list/ocr/docs/lau1990_and_1985.html); Dep’t of Health, Educ., and Welfare, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (May 25, 1970), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>.

<sup>29</sup> *See* Sept. 1991 Policy Memo (affirming OCR’s policy of applying the standards of the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f) to determine whether a recipient has complied with the implementing regulations of Title VI).

<sup>30</sup> *See* Union Cnty. Pub. Schs., UCPS – Initial Enrollment Information, Union County Pub. Schs., [http://www.ucps.k12.nc.us/communications/initial\\_enrollment.php](http://www.ucps.k12.nc.us/communications/initial_enrollment.php) (last visited Jan. 13, 2014).

attending school since April 2013 and has fallen even further behind her classmates. Because of Union County Public Schools' denial and delay, F.C. was prevented from enrolling in school on his first attempt in the first week of June. He was prevented from submitting enrollment paperwork until after he completed an English proficiency examination at the end of July. Although he started school in August 2013, his enrollment was ultimately delayed nearly three months, and F.C. missed out on summer school opportunities offered by the school. Had F.C. not been persistent about his right to enroll in school, he would not have been enrolled at all.

This is precisely the harm the *Plyler* Court sought to prevent. The Court in *Plyler* recognized that “[b]y 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.” *Id.* at 223. Quoting its landmark decision in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), the Court reiterated that “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.” *Plyler*, 457 U.S. at 223 (internal quotation marks omitted).

### **CONCLUSION AND REQUEST FOR RELIEF**

Because the Complainants were denied access to a free public education on the basis of their national origin, the Respondent Districts have violated the nondiscrimination provisions of Title IV, Title VI, and the clear holding of *Plyler*.

Complainants therefore ask the Department of Justice to:

1. Accept jurisdiction over, consolidate, and fully investigate the above claims;
2. Take all necessary action to ensure that Complainants are promptly enrolled in school in their district and receive services necessary to remedy lost educational services;
3. Require the Respondent Districts to adopt, announce, promote, and enforce a policy of nondiscrimination against students no matter their national origin, immigration status, age in relation to academic ability, or English speaking ability;
4. Require the Respondent Districts to provide training to staff likely to enroll students on the legal rights of students to enroll in school no matter their national origin, immigration status, age in relation to academic ability, or English speaking ability;
5. Take any other steps deemed necessary by the Department.

Respectfully,



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