

August 8, 2008

Dr. Linda Rhen, Director  
Pennsylvania Department of Education  
Bureau of Support Services  
333 Market Street  
Harrisburg, PA 17126

*Re: Complaint and Request to PDE to investigate school  
districts' enrollment policies and practices*

Dear Dr. Rhen:

The Education Law Center (ELC) is a legal advocacy organization that works on behalf of Pennsylvania's most disadvantaged public school children and their families. ELC files this request based on our examination of material posted on the official websites of 162 school districts in Pennsylvania. That review raised significant questions regarding those districts' enrollment policies and practices, and specifically whether they are in violation of 22 Pa. Code § 11.11 [hereinafter § 11.11], the Basic Education Circular entitled *Enrollment of Students* issued on July 1, 2002 [hereinafter BEC], and the provisions of 24 P.S. § 1302 of the PA School Code that relate to the enrollment of non-resident students [hereinafter § 1302]. This request is submitted in accordance with the procedures set forth in the BEC, and we hereby ask the Department to conduct an investigation to determine whether these school districts are, in fact, violating these state laws.

Should the Department determine that some or all of the school districts have illegal student enrollment policies or practices, we ask the Department to order the school districts to revise their enrollment policies to comply with state law, and to undertake other corrective action as set forth in the remedial portion of this request. We also ask that a meeting be scheduled as soon as possible to discuss the allegations and recommendations described in this request, as well as any other feasible remedies.

Finally, given the evidence of widespread confusion and illegal practices among school districts regarding Pennsylvania's enrollment laws, we request that the Department issue an alert to all 501 school districts clarifying Pennsylvania's enrollment rules and requesting school districts to review and, where necessary, correct their enrollment practices and policies to accord with applicable law. The alert should also make clear that enrollment information must be provided in a form that is comprehensible to parents or caregivers who are not fluent in English.

## **I. Pennsylvania's History of Enrollment Problems and Delays**

For years, ELC staff has received complaints from families, foster care caseworkers, and others that children's school enrollment was being delayed, sometimes for long periods of time. These delays were particularly harmful to children in out-of-home care who often change living situations and schools, and who can fall perilously behind in school. In response to these

complaints, ELC undertook a survey of schools and early intervention programs and, in 2002, published a report called *Lost in the Shuffle* that described the various enrollment and other barriers to education encountered by these children. A copy of that report is at <http://www.elc-pa.org/pubs/downloads/english/dis-lost-in-the-shuffle-revisited-12-02.pdf>. The report's key recommendation was that Pennsylvania needed a standardized admissions rule for all school districts. We recommended that the rule specifically list the factors and documents that schools can make conditions of school enrollment and include a timeline for enrolling students once the requisite documents were submitted. Section 11.11 and the BEC were published as a response to the ELC Report. ELC has also repeatedly advised callers about their rights under § 1302 and is currently handling litigation to force a school district to enroll a student pursuant to its provisions.

## **II. Current Situation**

Unfortunately, despite the new regulation and the BEC, ELC staff continues to receive complaints that school districts either demand proof of factors not contained in § 11.11 (for example, guardianship) or require proof through documents expressly proscribed by the BEC (such as social security numbers). We also continue to receive complaints that districts are violating § 1302. During the past school year alone, ELC handled 270 cases in which families encountered problems and delays of up to several months in enrolling children in school districts. Examples of such cases include:

- J.B. & D.B are twins. The school district required the students' mother to provide photo identification in order to enroll her children in school. Since the mother did not drive, and lacked a work or student photo identification card, she was unable to comply. The mother could not enroll the children and they missed one month of school until ELC intervened.
- The school district refused to enroll K.M. without proof of residency, specifically in the form of a utility bill. The family explained that the utility bill was in the landlord's, not the parents', name. Furthermore, they submitted an affidavit from the landlord and correspondence from the Commonwealth of Pennsylvania as proof of their address. However, it was not until ELC intervened that the school district allowed the child to enroll.
- Immediately upon his return from foster care, D.M.'s mother sought to enroll him in the school district where she resided. She submitted the requisite enrollment documents, but the school district refused his admission on the ground that his grade reports were missing. D.M. missed over two weeks of school before ELC intervened.
- A caseworker contacted ELC to report that several children in a district were refused enrollment in violation of § 1302 on the ground that their caregivers could not provide documentation of legal guardianship. ELC intervened in these cases and the students were ultimately enrolled.

### **III. The Law Regarding the Enrollment of Students in Pennsylvania Public Schools**

#### **A. Residence and the Right to Free School Privileges**

Under Pennsylvania law, a child between the ages of six and twenty-one is considered a resident of the district in which his or her parents or guardian resides and is entitled to attend school in that school district. 24 P.S. §§ 13-1301, 13-1302. School districts are required to admit non-resident students in certain circumstances, including when a resident of a school district keeps in his home a school age child, not his own, “and supports the child gratis as if it were his own.” In those cases the “child shall be entitled to all free school privileges accorded to resident school children of the district.” § 1302. In this situation, the “resident shall file with the secretary of the board” either “appropriate legal documentation to show dependency or guardianship,” or a sworn statement that he or she is a district resident, “that he is supporting the child gratis, that he will assume all personal obligations for the child relative to school requirements, and that he intends to so keep and support the child continuously and not merely through the school term.” *Id.* (emphasis added). If the resident chooses to file the sworn statement, the resident is not required to also be the child’s guardian.

#### **B. Student Enrollment Procedures**

The State has established guidelines to standardize school districts’ enrollment procedures and to ensure prompt school enrollment. The school district can require “the parent, guardian or other person having control or charge of the student” to supply “proof of the child’s age, residence, and immunizations,” § 11.11, and can require the person to file a Parent Registration Statement. 24 P.S. § 13-1304-A. However, once this information is supplied, a school district “shall normally enroll a child the next business day, but no later than 5 business days [following] application.” *Id.* This five-day rule is an important means of ensuring prompt school enrollment.

There is also a range of documentation that may satisfy the requirements for proof of birth or residency. For example, acceptable documentation for proof of the child’s date of birth includes not only a birth certificate, but also a baptismal certificate or a notarized statement from the parents indicating the date of birth. See BEC.

Pennsylvania law and the BEC make clear that there is certain information or documentation that school districts absolutely may not require as a condition of enrollment. For example, a child’s right to enroll in school may not be conditioned on the child’s immigration status. See 22 Pa. Code § 11.11(d) (“A school may not inquire regarding the immigration status of a student as part of the admission process.”). A school district may not require a student’s social security number/card, picture identification, or a visa. See BEC. In addition, a school district may not require court orders or the reason for a child’s placement if he is not living with his natural, pre-adoptive, or adoptive parents. The school *may* request additional information such as an academic record, completion of the Home Language Survey, IEP and additional special education records. *Id.* However, the school district may not require this information as a condition of enrolling the child in school. *Id.*

To substantiate a sworn statement by a resident who is supporting a child *gratis* under § 1302, school districts may, upon adoption of a school board policy, request copies of *one* item that shows that the signer is a resident of the district, and *one* item to show that the signer is supporting the child *gratis*. See Department of Education *Guidelines for Reasonable Information to Substantiate Sworn Statement by Resident Under 24 P.S. § 13-1302*. The school district may not require more than one item from each category. *Id.* The school district also cannot demand that the resident who is caring for the child be the child’s guardian unless the resident is relying on that factor (rather than the optional sworn statement) as the basis for enrolling the child under § 1302.

#### **IV. The Pennsylvania Department of Education’s Duty to Enforce Residency and Enrollment Laws**

State and federal laws as well as case law make clear that the Department and its Secretary have an on-going duty to enforce the laws described in Section III above.

##### **A. The Department’s Duty Under State Law**

The statute creating the Department requires it to “administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools.” 71 P.S. § 352(a). Section 11.11, its implementing BEC, and § 1302 are such laws. This duty has consistently been upheld by Pennsylvania courts. In *Commonwealth, Dep’t of Educ. v. Empowerment Bd. of Control of Chester-Upland School Dist.*, 938 A.2d 1000, 1007 (Pa. 2007), the Pennsylvania Supreme Court cited 71 P.S. § 352(a) as providing the Department with the “power and duty” to uphold and enforce the laws of the Commonwealth with regard to the conduct of public schools, including provisions of the School Code. *See also Pittenger v. Union Area Sch. Bd.*, 356 A.2d 866, 868 (Pa. Cmmw. Ct. 1976). The courts have also stated that Pennsylvania law assigns to the Department of Education “the ultimate responsibility for oversight of the commonwealth’s public education system, 71 P.S. § 352, including the education of handicapped children in local school districts and intermediate units, §§ 13-1372 (2) and (3).” *Hendricks v. Gilhool*, 709 F. Supp. 1362, 1368 (E.D. Pa. 1989). The statute and case law thus impose a duty on the Department to ensure that school districts comply with all state law, including those relating to student enrollment.

In addition, the Department must, “[w]henever required . . . give advice, explanations, construction, or information, to the district officers and to citizens relative to the school laws, the duties of school officers, the management of the schools, and all other questions and matters calculated to promote the cause of education.” 71 P.S. § 352(c). ELC’s experience with the plight of individual students and the investigation that is the basis for this request provide substantial evidence that Pennsylvania school districts need such explanations and information from the Department regarding their enrollment and residency policies.

##### **B. The Department’s Duty Under Federal Law**

Federal law prohibits the Department and local educational agencies from discriminating on the basis of national origin. Title VI of the Civil Rights Act, 42 U.S.C. § 2000d. The

Department, as a recipient of federal funds, must ensure that school districts, also federal recipients, are not denying or delaying immigrant students' school enrollment. 22 PA Code §11.11(d), which prohibits school districts from inquiring into students' immigration status as part of the enrollment process, promotes compliance with Title VI. *See also Plyler v. Doe*, 457 U.S. 202 (1982) (illegal immigrants residing in Texas cannot be excluded from the public schools). In addition, Title VI requires that information critical to enrolling students be accessible to families and caretakers who are not proficient in English.

Under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.*, (IDEA) Pennsylvania is responsible for ensuring that the requirements of the IDEA are met for all students with eligible disabilities in the state. This includes providing *all* children with disabilities a free appropriate public education (FAPE). 20 U.S.C. § 1412(a)(1). This federal mandate is defeated when school districts refuse to enroll students with eligible disabilities in a timely manner, leaving them with no access to the special education they need. The Department, as the state educational agency, has the duty to ensure that eligible students with disabilities have access to school and receive FAPE. *See, e.g.*, 34 C.F.R. § 300.227 (SEA must provide services itself if an LEA is unable or unwilling to provide FAPE to children with disabilities).

In short, the Department has a duty under federal and state law to investigate this request and to grant the relief requested. This duty was acknowledged when the Department set up the administrative procedure for resolving residency disputes that is codified in the BEC.

## V. Questionable School District Enrollment Policies or Practices

To determine whether school districts are complying with state enrollment laws, ELC staff visited the official websites of all PA school districts to search for enrollment, residency, or admission policies or evidence of district enrollment practices. The material was then reviewed to determine whether it complied with § 11.11, the BEC and § 1302.

**Overall Findings:** Out of the 501 districts, 278 have either enrollment policies/guidelines or other evidence of enrollment practices posted online. Some of the guidelines relate to an individual school. Of these 278, evidence suggests that 162 districts have either policies or practices that violate § 11.11, the BEC, § 1302, or a combination of the three.

**Specific Findings:** The questionable policies, guidelines or practices range from requiring documents specifically forbidden by law (such as Social Security cards) to refusing to permit recognized alternative documentation for valid requirements (such as requiring a birth certificate only as proof of age). For the specific violations of individual school districts, see Exhibit A.

- **Social Security Numbers or Cards:** Fifty-seven online school district policies or guidelines require the child's social security number as a prerequisite to enrolling a child in school. The BEC specifically states that "enrollment procedures may not require a social security number." Of these districts, twenty-one require the child's social security card. Two school districts require the parent's social security number in addition to the child's social security number.

- **Health History/Physical Exams:** Sixteen school districts require the parent or guardian to supply additional health records beyond the immunizations that are required by law. Typically these school districts require a physical exam, a dental exam, and/or a health history. Eight districts require parents to provide both a physical exam form and a dental exam form. Four districts require a health history.
- **Parental ID/Picture Identification:** Thirty-four school districts require some form of parental identification. The BEC states that “enrollment procedures may not require . . . picture identification.” Twenty-eight districts require some form of photo identification. Three specifically require a parent/guardian driver’s license, and three require multiple proofs of parental identification.
- **Custody, Court Orders or Guardianship:** Forty-three school districts require some type of proof of custody, court order, or guardianship, regardless of whether the family is relying on the guardianship subsection of § 1302. Many of these districts ask for these documents if the parents are divorced or separated. The BEC specifies that enrollment procedures may not require court orders or guardianship. Fifteen school districts specifically require proof of guardianship or legal papers related to guardianship. Nine school districts specifically require court orders.
- **Immigration Status:** The BEC states that enrollment procedures may not require a visa. One school district requires a passport and visa for all students, while another requires a resident alien card. A third school district states that children of “alien residents” must receive special approval from the superintendent of schools.
- **1302 Violations:** Fourteen school districts’ policies facially violate § 1302. Most commonly, the school districts require a parent or legal guardian to enroll a child in school. However, § 1302 does *not* require the resident caring for the child to be the child’s guardian or to have legal custody of the child if the resident chooses the second enrollment option – to file the requisite “sworn statement.” Two school districts that do allow residents who are not legal guardians to enroll children impermissibly require the resident to furnish photo identification. Several school districts require superintendent authorization for enrollment of such a nonresident student. One district only admits nonresident students if there is sufficient room in the class.
- **Proof of Age:** Out of the 162 school districts that have policies or guidelines posted on their websites, 141 have impermissible requirements for proof of age. The majority require that parents bring in the child’s birth certificate only. The BEC specifies that a birth certificate, baptismal certificate or transcript of the record of baptism, a notarized statement from the parent indicating the date of birth, a duly attested transcript of the birth certificate, and a duly certified transcript of birth are all acceptable documentation to show proof of age.
- **Proof of Residency:** Sixty-six school districts have impermissible requirements for proof of residency. The BEC does not limit the means by which a parent or guardian can prove residency. Some districts, however, only allow proof of residency through a limited number of specific documents. For example, one district specifies that parents or guardians must

bring in a rental or purchase agreement. The district does not allow for other forms of proof, such as driver's licenses, vehicle registrations, W2's, or utility bills. Other districts require parents or guardians to provide multiple proofs of residency. Some districts require two proofs, while some require up to *six* proofs of residency.

- **Delayed Enrollment:** Four districts do not comply with the requirement set forth in § 11.11 that children are to be enrolled the next business day, but no later than five days after submitting the application materials. Three districts impose a three-day “waiting period” for enrollment, while one district specifies that families will not be informed of their child’s start date until after the new school has received all records from the former school.
- **Miscellaneous:** The BEC lists several documents that can be requested from parents or guardians, but that cannot be “required” as a condition of enrollment, such as the student’s “academic record, attendance record, completion of the Home Language Survey, IEP and other special education records.” Several school districts specifically deny students enrollment until these documents are provided. Thirty school districts require student transcripts, report cards, or school records, while twenty-two districts require students’ IEPs and other special education documentation; five districts require home language surveys. Thirteen districts require a number of other documents, such as a detailed description of the student’s home location, psychiatric reports, or a discipline record.

## **VI. Requested Action**

As discussed below, we hereby ask the Department to: (1) send an alert to all school districts delineating the applicable legal rules; (2) investigate the enrollment practices of the 162 school districts referenced herein and take appropriate corrective action; and (3) inquire as to the enrollment practices of school districts that have not posted their enrollment policies online. We also ask that the Department send us copies of any materials it distributes to school districts and that it keeps us apprised of the status of its investigation and any corrective action requested or implemented. As part of its review, the Department should also ensure that all district policies are fully accessible to families and caretakers who are not proficient in English.

### **A. Sending an Alert to All School Districts**

We request that the Department send an alert to all school districts before the 2008-2009 School Year begins to reiterate the rules and policies governing student enrollment, and what school districts can and cannot require for student admission.

### **B. The 162 School Districts**

One hundred sixty-two school districts have posted enrollment policies, guidelines, or other material on their websites that suggest that the school districts are not fully complying with some requirement of § 11.11, § 1302, the BEC, or a combination of the three. We ask that the Department immediately investigate these school districts to determine whether they are in fact violating state law. To facilitate this investigation, copies of the policies and guidelines indicating illegalities are attached hereto as Exhibit B.

To the extent that the Department concludes that a school district is not complying with applicable law, we ask that the Department, at minimum:

- Ask the school district to remove non-compliant enrollment policies and guidelines from the website and all publications.
- Ask the school district to provide the Department with a new enrollment/residency policy that fully complies with state law and the BEC, and to post the new policy before the beginning of the 2008-2009 School Year.
- Ask the school district to submit to the Department an implementation plan that explains how the school district will train relevant staff and inform the public of the new policy.
- With respect to any student eligible for special education services who has been illegally denied enrollment, request that the school district inform the student's parent, guardian or caretaker of the student's potential eligibility for compensatory education services and ask the school district, where possible, to convene an IEP meeting for the purpose of determining eligibility for such services.
- Ask the school district, where possible, to contact all families who were denied admission as a result of noncompliant policies in the 2007-2008 or 2008-2009 School Years, inform them of the corrected policies, reassess the students' eligibility for enrollment based on the corrected procedures, immediately enroll the students for the new School Year if they are determined eligible, and, if still determined to be ineligible, inform the students' caretakers in writing of the reason for the denial.

### **C. Other School Districts**

ELC's investigation shows that 223 school districts do not have their enrollment policies or procedures posted online. A list of those districts is included as Exhibit C. Judging from the high occurrence of problematic policies and guidelines identified, we suspect that a significant percentage of districts that have not posted enrollment policies may also be noncompliant with state enrollment laws and Department guidance. In addition, enrollment policies are public records under Pennsylvania's Right to Know Law, 65 P.S. §§ 66, 67. Accordingly, school districts and the Department have a duty to make these public records accessible.

In light of the foregoing, with respect to those districts that do not have their policies posted online, we urge that, by the end of August, 2008, the Department send a letter requesting a copy of the 223 school districts' enrollment, residency, and admissions policies; that the Department conduct a prompt review to determine if the policies are compliant with § 11.11, § 1302, and the BEC; and, if the policies are not compliant, the Department follow the steps outlined for corrective action.

#### **D. Meeting with the Education Law Center**

We request a meeting with appropriate Department staff to discuss this matter and the above-proposed action. Thank you for your attention to this matter. Please respond to Saba Bireda, Esq. at sbireda@elc-pa.org or Maura McInerney, Esq. at mmcinerney@elc-pa.org.

Very truly yours,

Saba Bireda, Esq.  
Janet Stotland, Esq.  
Maura McInerney, Esq.  
Nicole Dooley, Law Intern  
Rachel Stanton, Law Intern

#### **VII. Appendices/Exhibits**

Exhibit A: List of School Districts with Illegal Enrollment Policies or Guidelines on Their Websites

Exhibit B: Noncompliant School District Enrollment/Residency Policies and/or Guidelines

Exhibit C: List of School Districts Without Policies or Guidelines Posted Online

Cc: Ernest Helling, Esq.  
Sarah Pearce