

*‘Admit first, ask questions later’*

# NYS school districts enter second year of new approach to enrollment

In June 2015, the Board of Regents adopted permanent regulations regarding residency determinations related to student enrollment procedures. Informally summarized as “admit first, ask questions later,” the new, mandated approach was a sharp departure from traditional screening, which often involved requiring documents proving residency prior to admission. A year later, it is appropriate to review the circumstances leading to the change, analyze the results, and strategize for future enrollments.

The new enrollment measures can be traced to the U.S. Supreme Court’s 1982 decision in *Plyler v. Doe*, which declared a 1975 Texas law unconstitutional because it permitted local school districts to deny enrollment based upon a child’s immigration status. The court said Texas’s approach violated the Equal Protection Clause of the Fourteenth Amendment because it deprived the child’s fundamental right to education.

As recently as 2010, the New York State Education Department (“SED”) expressed concerns mirroring those addressed in *Plyler*, regarding districts’ enrollment practices for undocumented children. SED issued a 2010 guidance memorandum that advised districts against “asking questions related to immigration status” during enrollment and encouraged them to use “extreme sensitivity” in the collection of student demographic data to “ensure that resident students are not inadvertently discouraged from enrolling or attending school.” Similarly, in September 2014, the SED issued another memorandum regarding unaccompanied children. This memo focused on districts’ residency determinations and advised against delaying enrollment when sponsors of undocumented children establish guardianship.

During fall 2014, New York’s Attorney General’s Office (OAG) investigated the Hempstead school district when allegations surfaced that the district instructed Hispanic students – primarily recent immigrants – to sign attendance sheets and to subsequently return home due to insufficient classroom space. Relying on the *Plyler* decision, New York Attorney General Eric T. Schneiderman remarked, “[s]choolhouse doors must be open to all students in our diverse state, regardless of their immigration status.”

Notably, a significant number of unaccompanied children that entered the U.S. from Mexico and Central America came to live in New York State. Between October 2013 and September 2014, the U.S. Office of Refugee Resettlement placed 5,955 minors with guardians in New York State. In October 2014, SED and the OAG commenced a joint review of schools’ enrollment policies that focused on school districts in Nassau, Suffolk, Westchester, and Rockland Counties. Due to the influx of the minors in these counties, the joint review sought to determine whether schools discriminated against current and prospective students based on immigration status. Based on the findings of the joint review, the process escalated when formal investigations opened in September 2015.

The investigation concluded that schools were denying or delaying students’ enrollment based on their immigration status. The investigation’s cumulative findings are illustrated by Hempstead’s enrollment policies. The investigation determined, between summer 2014 and February 2015, the district delayed enrollment with overly-restrictive policies on proof of immunization, age, and residency. Further, the district regularly advised students that district classrooms were at capacity, whereby the district maintained a “wait list” of more than 60 students, some of which remained on the list as of February 2015. SED ordered the district to immediately enroll all



**The Utica school district has a large number of students born in other countries. In May, the district settled a lawsuit by pledging, among other things, to modify its enrollment procedures and retain an independent monitor.**

➤ Photo courtesy of Utica City School District, On Board file photo

students who were awaiting enrollment and to provide monthly affidavits of compliance.

In addition, since many of these students come from other countries, a language barrier is often present when these students seek to enroll and function in school. Hempstead now offers additional resources for parents and students, including new testing procedures, bilingual teachers and translation services at school board meetings. In addition, new students seeking enrollment are given a language proficiency test and an independent monitor guides students through the registration process.

The state investigation expanded to more than 20 districts. The OAG and SED determined that all of these districts unlawfully requested things such as proof of social security cards, disclosure of visa status, and admissions related to U.S. citizenship. The investigation determined each of the aforementioned inquiries violated *Plyler* and were likely to lead to chill student enrollment. In most cases, the investigations were resolved with the districts entering into settlement agreements with the Attorney General’s Civil Rights Bureau. The settlements generally included modification of district enrollment materials and policies to eliminate inquiries into citizenship/im-

migration, development of new enrollment procedures to outline the responsibilities of relevant district personnel, development of training materials, record keeping requirements for district denials of student enrollment, and regular reporting to the Attorney General concerning denials of enrollment.

In May, the Utica city school district settled a lawsuit filed by the state by agreeing to modify enrollment procedures and hire an independent monitor, among other things. The state had alleged that district discriminated against immigrant students by requiring students to furnish immigration documents as proof of age. Also, the district was accused of diverting students with limited ability to speak English into alternative programs that were not designed to lead to a high school diploma. The district admitted no wrongdoing in the settlement.

In a separate lawsuit against Utica, filed on behalf of six refugees by the New York Civil Liberties Union (NYCLU) and Legal Services of Central New York, the complaint similarly alleges that Utica diverted refugees who were older than 16 into alternative programs. On May 19, 2016, Utica settled the lawsuit and entered into an agreement that would require the district to contact all school-age students documented by the Mohawk Valley Resource Center for Refugees over the past four years who are not enrolled in high school to explain the students’ rights to attend. Utica admitted no wrongdoing as part of the settlement, and the district is reportedly already in the process of fulfilling compliance with the settlement.

## District concerns and strategies

School districts’ concerns have included the resources necessary to ensure compliance. For instance, districts may find it necessary to have staff or translators who speak multiple languages to ensure that parents and students are not dissuaded from the enrollment process. Even if your district has not historically had a large immigrant population, it should prepare for future enrollments by ensuring that enrollment and registration materials are compliant with law, that staff is properly trained and proper procedures are in place. Districts that have been subject to state scrutiny can serve as benchmarks for compliance.

Another concern has involved fraud. As the regulations were developed, school attorneys noted that, in addition to their obligation to enroll qualified students, districts also have an obligation to taxpayers to not have them pay for the education of children who are not, in fact, district residents. Consult with your school attorney regarding how to balance these two responsibilities.

While some school districts have not felt a significant impact from these changes, others have had to revise their procedures, add clerical and other staff related to student registration and, in cases where enrollment has significantly increased, add teaching staff. The impact of the new regulations will continue to vary among school districts. However, it is fair to say that “admit first and ask questions later” represents a new set of rules, and everyone should be prepared.



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