

April 18, 2019

**Via Email and Certified Mail**

Superintendent Gina Thompson  
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**Arizona**

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Dale Baich  
*President*

Alessandra Soler  
*Executive Director*

Kathy Brody  
*Legal Director*

*Re: State-Issued ID Enrollment Requirement*

Dear Ms. Thompson:

The ACLU of Arizona recently learned that some registration policies in place within the Yuma Union High School District #70 (“YUHSD” or “District”) may be unlawful. Specifically, at least one school in the District (San Luis High School) has a pre-enrollment policy that requires a parent or legal guardian to present an Arizona state-issued driver’s license or identification card. Additionally, the policy requires that any non-parent attempting to register a student be a legal guardian or actively pursuing guardianship through the courts. San Luis High School’s policy deters and prevents eligible children from enrolling in school, particularly children who are undocumented themselves or have undocumented parents or who are facing significant economic hardships. It may also violate the U.S. and Arizona Constitutions and applicable state and federal statutes, as detailed below. We write to urge the District to take immediate action to change these unlawful policies.

**I. Arizona law does not require, and the Arizona Constitution prohibits, schools from requiring a specific form of identification from parents, legal guardians, or other custodians.**

Arizona law requires schools (with limited exceptions) to admit children who “are between the ages of six and twenty-one years [and] who reside in the school district.” A.R.S. § 15-821(A). There is no Arizona statute that requires a parent or legal guardian to possess a state-issued ID card or to prove residency with a photo ID. In fact, the Arizona Department of Education’s Residency Guidelines provide a list of more than a dozen different documents sufficient to prove residency.<sup>[1]</sup>

In addition, the Arizona Constitution guarantees children who reside in Arizona a right to a free K-12 education. Ariz. Const. art. XI, §

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<sup>[1]</sup> Available online at <https://www.azed.gov/policy/files/2017/06/final-revised-residency-guideline-1-29-18.pdf>.

1, 6; *Magyar By & Through Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423, 1442 (D. Ariz. 1997) (“Article XI §§ 1, 6 of the Arizona Constitution establishes education as a fundamental right of students”). Requiring a parent or guardian to possess a driver’s license or state identification card violates the child’s right.

## **II. Arizona law allows a child to enroll in school, even if the child lives with an adult who is neither a parent nor legal guardian.**

San Luis High School’s policy also prevents children residing with a custodian – such as a relative who is not their parent or legal guardian – from receiving the education to which they are entitled. Arizona children maintain their fundamental right to a free education, regardless of the relationship between the child and the caregiving adult. For purposes of establishing residency, it does not matter whether the child lives with a parent, legal guardian, or some other adult.<sup>[2]</sup> *Sleeseman v. State Bd. of Educ.*, 156 Ariz. 496 (Ct. App. 1998) (observing that the legislature expressly provided for school enrollment in these circumstances following a state court decision to the contrary). Thus, a child who lives with a custodian must be allowed to enroll so long as the child and custodian reside in the district.

## **III. A policy requiring state-issued ID cards for registration violates the Fourteenth Amendment.**

In Arizona, state-issued IDs are available only to those whose “presence in the United States is authorized under federal law.” A.R.S. § 28-3153(D). Consequently, requiring a parent or guardian to have a state-issued identification card effectively shuts the schoolhouse doors to any child whose parents or guardians lack federal immigration status. This is a violation of the Equal Protection Clause of the Fourteenth Amendment because it both denies “innocent children the free public education that it offers to other children” and deters additional children from enrolling in school based on a household member’s immigration status. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 230 (1982); *Hispanic Interest Coal. v. Governor of Ala.*, 691 F.3d 1236, 1245 (11th Cir. 2012) (noting that *Plyler* prohibits facially neutral regulations that may “significantly interfere[] with the exercise of the right to an elementary public

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<sup>[2]</sup> A.R.S. § 15-823(F) states that children may be admitted who are (1) residents of the United States; (2) evidence indicates that the parents are homeless or the child is abandoned, and (3) the child’s physical, mental, moral or emotional health is best served by placement with a person who does not have legal custody of the child and who is a resident within the school district.



education” even if such regulation does not outright deny any child the ability to enroll).

The United States Department of Education (“DOE”) and Department of Justice (“DOJ”) have warned that school districts may be in violation of federal law if their policies “prohibit or discourage children from enrolling in schools because they or their parents/guardians are . . . undocumented.”<sup>[3]</sup> Indeed, the DOJ and DOE have clarified that, “while a district may choose to include a parent’s state-issued identification or driver’s license among the documents that can be used to establish residency, a school district may not require such documentation to establish residency or for other purposes where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.”<sup>[4]</sup> Thus, the current policy acts as a deterrent to those children who are entitled to a free public school education but whose parents or legal guardians lack federal immigration status.

#### **IV. The McKinney-Vento Act requires relaxed proof-of-residency procedures for “homeless children and youth.”**

In addition to violating the federal and state constitutions, the current policy violates the McKinney-Vento Act, 42 U.S.C. § 11431, *et seq.*, by failing to adjust the District’s “regulations, practices, or policies [which] act as a barrier to . . . homeless children and youths.” 42 U.S.C. § 11431; *Nat’l Law Ctr. on Homelessness & Poverty, R.I. v. New York*, 224 F.R.D. 314, 321 (E.D.N.Y. 2004) (describing McKinney-Vento as providing “mandatory entitlements to homeless children”). McKinney-Vento requires that the school district “immediately enroll the homeless child or youth, even if the child or youth[] is unable to produce records normally required for enrollment, such as . . . proof of residency, or other documentation.” 42 U.S.C. § 11432(g)(3)(C). McKinney-Vento also places additional obligations on the school district with respect to the enrollment and continued education of “unaccompanied youth,” which includes homeless children who are “not in the physical custody of a parent or guardian.” 42 U.S.C. § 11434a; 42 U.S.C. § 11432(g)(3)(C).

The protections described above apply to a broadly-defined group of children considered to be “homeless” under McKinney-Vento. This

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<sup>[3]</sup> DOJ and DOE, *Fact Sheet: Information on the Rights of All Children to Enroll in School*, available online at <https://www.justice.gov/crt/fact-sheet>.

<sup>[4]</sup> DOJ and DOE, *Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents*, available online at <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerqa.pdf>.



includes “children and youths who are sharing the housing of other persons due to loss of housing [or] economic hardship,” children who are “living in motels, hotels, trailer parks, or camping grounds,” children who are living in “emergency or transitional shelters,” and children who are living in “cars, parks, public spaces, abandoned buildings [and] substandard housing.” 42 U.S.C. § 11434a. Importantly, the protections extend to children living with “a parent . . . who is a migratory agricultural.” 20 U.S.C. § 6399 (refer to in 42 U.S.C. 11434a). This latter category, alone, comprises a significant part of YUHSD’s student population.<sup>[5]</sup> In sum, the current policy violates the rights of homeless children and unaccompanied youth by imposing a one-size-fits-all procedure that requires various categories of documents in all instances, without regard to the child’s eligibility for McKinney-Vento protections.

### Conclusion

San Luis High School’s state-issued ID policy chills and prevents school enrollment in the District. Additionally, the requirement that a student must reside with a parent or legal guardian in order to attend school has no basis in Arizona law and violates the student’s fundamental right to an education under the Arizona Constitution. Singling out a child whose parents or guardians do not possess a driver’s license or Arizona identification card does not serve any educational purpose. Nor does singling out a child who does not have a parent or legal guardian. The policy simply keeps deserving children from receiving an education based on their parent’s or guardian’s status, which has nothing to do with the child’s right to education and is entirely out of the child’s control. This policy is unconstitutional, contrary to state and federal statute, and detrimental to Arizona children.

The ACLU of Arizona demands that the District immediately end San Luis High School’s unlawful pre-enrollment policy. We ask that you respond to this letter in writing no later than May 3, 2019, indicating what action the District intends to take to remedy these legal violations. Thank you in advance for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Brody".

Kathleen E. Brody  
Legal Director

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<sup>[5]</sup> See Arizona Alliance for Community Health Centers, *2013 Arizona Migrant Health Profile* at 4 (showing over 41,000 farmworkers in Yuma County in 2008 season), available online at <https://www.aachc.org/wp-content/uploads/2014/01/Migrant-Health-Profile-2013.pdf>.