



ACLU

FOUNDATION

AMERICAN CIVIL LIBERTIES UNION
of NEW JERSEY

P.O. Box 32159
Newark, NJ 07102

Tel: 973 642 2086
Fax: 973 642 6523

info@aclu-nj.org
www.aclu-nj.org

ELLEN SAMUEL
President

DEBORAH JACOBS
Executive Director

EDWARD BAROCAS
Legal Director

THOMAS S. HARRIS
Development Director

August 29, 2008

The Honorable Lucille E. Davy
New Jersey Department of Education, Office of the Commissioner
100 River View Plaza, P.O. Box 500
Trenton, NJ 08625

Dear Commissioner Davy:

The American Civil Liberties Union of New Jersey is writing to urge you to take immediate action to rectify a continuing problem relating to school districts' improper request of Social Security Numbers (SSN) or other private information that would reveal the immigration status of children seeking to enroll in public schools in New Jersey. This practice has a chilling effect on immigrant students seeking to register for school and violates state and federal law.

Although all children in New Jersey have a right to public education, the ACLU-NJ has learned that at least 139 school districts in New Jersey require families to either produce SSNs for the children enrolling or produce other documents that would indicate immigration status. For many children of undocumented immigrants in New Jersey, if a school district so much as inquires about SSN or citizenship, the parents will turn away from trying to register their children due to fear of deportation or other consequences.

As you well know, the law on this matter is clear:

New Jersey's state law (N.J.S.A. 18A:38-1) clearly states that domicile and age are the only factors to determine eligibility for a free public education. All children between the ages of five and 20 are eligible to attend public school, regardless of their immigration status.

Further, the New Jersey Administrative Code (N.J.A.C. 6A:22-3.4(d)) specifically states, "A district board of education shall not require or request, as a condition of enrollment in school, any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school." The Code explicitly states that schools are barred from and may not directly or indirectly, require or request:

1. Income tax returns;
2. Documentation or information relating to citizenship or immigration/visa status, ...
3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and
4. Social security numbers.

Additionally, Section 7 of the federal Privacy Act of 1974 requires state and local government agencies requesting an individual's SSN to make the following disclosures: (i) the authority by which the SSN is solicited; (ii) whether disclosure by the individual is mandatory or voluntary; and (iii) the uses to which such information shall be put.

Finally, the Supreme Court in *Plyler v. Doe*, 457 U.S. 202 (1982), held that undocumented children living in the United States could not be precluded from public elementary and secondary schools based on immigration status.

In July 2008, the ACLU-NJ began a survey project to assess the legality of enrollment requirements in school districts through-out the state. The ACLU-NJ project team, made up of volunteers and staff members, called 635 school districts in all counties of New Jersey, and made contact with 516. The team found that 139 school districts – over one in four – illegally required SSNs or other information that would reveal the immigration status of students seeking to enroll. In addition, another 48 school districts suggested that such information would aid in the registration process. Thus, a total of 187 school districts – more than one in three – acted in violation of the law.

Today, the ACLU-NJ sent letters to the 187 non-compliant school districts requesting that the demands for SSN numbers or information about immigration status be removed from enrollment forms and that administrative staff who may handle such inquiries be trained about the law.

In 2006, a similar, though less exhaustive survey was done where 57 of 224 school districts surveyed requested information that would reveal the immigration status of children or their parents seeking to enroll them. This year 55 of the 57 non-compliant schools identified in 2006 were contacted. Twenty-one of those schools, an astounding 38%, are still asking for information protected from disclosure. This is so despite the fact that, after our initial 2006 study, two-thirds of the schools indicated that they would amend their forms or retrain staff.

Based on the pervasiveness of this problem, the ACLU-NJ urges your office to take immediate steps to end these practices.

Specifically, the ACLU-NJ requests that the state Department of Education:

- Issue a formal, written directive to all school superintendents in New Jersey reminding them of the law;
- Monitor compliance;
- Require school districts to train frontline school personnel who handle such inquiries from parents of prospective students; and
- Require school districts to revise all registration forms, including information posted on web sites, so they comply with the law.

Given that the Department of Education has sent memos to school districts on several occasions on this very issue, we wish to emphasize that monitoring compliance is essential if this practice, which puts immigrant students at risk of exclusion from public school, is to end.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Barocas', written in a cursive style.

Ed Barocas

Legal Director

American Civil Liberties Union of New Jersey