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ALEXANDER SHALOM
Senior Staff Attorney

VIA NJ LAWYERS SERVICE

October 17, 2016

Clerk, Chancery Division
Superior Court of New Jersey
56 Paterson Street
New Brunswick, NJ 08903

Re: *American Civil Liberties Union of New Jersey v. Jamesburg Public School District*

To Whom It May Concern:

Enclosed for filing, please find an original and two copies of the following:

- 1) Verified Complaint and Designation of Trial Counsel;
- 2) Order to Show Cause with Temporary Restraints;
- 3) Letter Brief in Support of Application for Temporary Restraints; and
- 4) Certification of Service.

Sincerely,

Alexander Shalom (021162004)
Senior Staff Attorney

Alexander Shalom, Esq. - 021162004
Edward L. Barocas, Esq. - 026361992
Jeanne LoCicero, Esq. - 024052000
American Civil Liberties Union
of New Jersey Foundation

P.O. Box 32159
Newark, New Jersey 07102

Attorneys for Plaintiff

AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MIDDLESEX COUNTY
	:	CHANCERY DIVISION
	:	
Plaintiff,	:	Docket No.
	:	
v.	:	
	:	CIVIL ACTION
JAMESBURG PUBLIC SCHOOL: DISTRICT	:	
	:	
	:	
Defendant.	:	CERTIFICATION OF SERVICE

I, Alexander Shalom, hereby certify the following:

1. I caused two copies of the Verified Complaint and Designation of Trial Counsel; Order to Show Cause with Temporary Restraints; and Letter Brief in Support of Application for Temporary Restraints to be delivered via New Jersey Lawyers Service to the following attorneys:

Schwartz, Simon, Edelstein & Celso LLC
Attorneys at Law
100 South Jefferson Road Suite 200
Whippany, New Jersey 07981

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Alexander Shalom

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Jeanne LoCicero (024052000)
Alexander Shalom (021162004)
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Counsel for Plaintiff

AMERICAN CIVIL LIBERTIES UNION OF)	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY,)	MIDDLESEX COUNTY
)	CHANCERY DIVISION
Plaintiff,)	
)	Docket No.
v.)	
)	CIVIL ACTION
JAMESBURG PUBLIC SCHOOL DISTRICT)	
)	
Defendant.)	VERIFIED COMPLAINT AND
)	DESIGNATION OF TRIAL COUNSEL
)	

Plaintiff, through its undersigned attorneys, states its Complaint as follows:

PRELIMINARY STATEMENT

1. This action is brought to vindicate the constitutional rights of residents of Jamesburg, New Jersey, whose children will be denied access to free, public education in their hometown because of their parents' immigration status. It is part of the American Civil Liberties Union of New Jersey's mission to ensure that the constitutional and statutory rights of children of immigrants to obtain an education are not infringed. Over the past dozen years, Plaintiff has dedicated extensive resources to ensuring that New Jersey school districts' adhere to the mandates of *Plyler v. Doe*, 457 U.S. 202, 228 (1982), *N.J.S.A.* 18A:38-1 and *N.J.A.C.* 6A:22-3.4(d).

2. In addition to requesting proof of residency, age, current immunizations (all of which are permissible), the Jamesburg Public School District (hereafter “the School District” or “Jamesburg”) adds an impermissible and discriminatory registration hurdle: a requirement that parents provide a valid New Jersey state-issued driver’s license. It is not possible for immigrants who lack Social Security numbers or a valid immigration status to obtain such identification. Therefore, these residents and their children are prevented from registering for school and are denied equal protection of the laws.

3. Plaintiff brings this action to enjoin Defendant and end this policy which violates the New Jersey and United States Constitution.

VENUE

4. Venue is proper in Middlesex County pursuant to R. 4:3-2(a) because Defendant is located in Middlesex County.

PARTIES

5. The American Civil Liberties Union of New Jersey ("ACLU-NJ") is a private, non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has approximately 12,000 members and donors in New Jersey and tens of thousands of supporters across the state. Its primary office is in Newark, New Jersey. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of hundreds of thousands of members and supporters nationwide. Among the organizational interests of the ACLU-NJ is insuring access to education for all New Jerseyans, regardless of immigration status.

6. The ACLU-NJ has expended significant resources advocating for equal educational opportunities for immigrant students and students who are the children of immigrant parents. On several occasions the ACLU-NJ has conducted statewide surveys of school districts to determine

compliance with regulations ensuring access to education. *See, e.g.,* <https://www.aclu-nj.org/news/2006/08/29/survey-immigrants-risk-exclusion-in-1-of-4-nj-schools>; <https://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children>; <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>. The ACLU-NJ has engaged in significant advocacy with the State Department of Education. *See, e.g.,* <https://www.aclu-nj.org/files/6713/1540/4574/082906LtrDOE.pdf>; <https://www.aclu-nj.org/files/4713/1540/4575/091508letterdavy.pdf>; https://www.aclu-nj.org/download_file/1449. Plaintiff has engaged in litigation and advocacy to ensure access to primary, secondary and higher education for children of immigrants. *See, e.g.,* <https://www.aclu-nj.org/legaldocket/z-v-hes/>; <https://www.aclu-nj.org/files/8813/1661/2977/092111annrep.pdf> (pages 18-19); <https://www.aclu-nj.org/news/2014/03/11/school-district-drops-discriminatory-policy-upon-aclu-nj-cha>. The ACLU-NJ has also been actively involved in legislative efforts to ensure access to education for immigrant youth. *See, e.g.,* <https://www.aclu-nj.org/news/2013/12/19/aclu-nj-statement-nj-dream-act-agreement>; The leadership of the ACLU-NJ on this issue was recognized in the Governor's Blue Ribbon Advisory Panel on Immigrant Policy's *Report to Governor Jon S. Corzine*. http://blog.nj.com/ledgerupdates_impact/2009/03/imm%20report.pdf (page 45-47). In 2014, sued the Butler School District (Morris County) for similar violations. Monsy Alvarado, *The Record*, "ACLU sues Butler school district over registration policy targeting immigration status" March 10, 2014 (available at: <http://www.northjersey.com/news/aclu-sues-butler-school-district-over-registration-policy-targeting-immigration-status-1.732719>). Thereafter, the ACLU-NJ sent letters to more than 135 districts explaining that their registration policies violated constitutional and statutory law and controlling regulations. Diane D'Amico, *The Press of Atlantic City*, "ACLU warns 138 N.J. school districts against policies that discourage immigrant enrollment" April 2, 2104

(available at: http://www.pressofatlanticcity.com/communities/atlantic-city_pleasantville_brigantine/aclu-warns-n-j-school-districts-against-policies-that-discourage/article_a46dde12-b9db-11e3-b959-0019bb2963f4.html). The ACLU-NJ sued seven additional districts that had failed to change their policies. ACLU-NJ, Press Release, *ACLU-NJ Files Seven Lawsuits Against School Districts' Discriminatory Enrollment Policies*, June 2, 2014 (available at: <https://www.aclu-nj.org/news/2014/06/02/aclu-nj-files-seven-lawsuits-against-school-districts-discri>). All of those suits settled after the districts agreed to change their policies. <https://www.aclu-nj.org/news/2014/06/10/aclu-nj-statement-successful-resolution-7-school-district-su>.

7. Defendant Jamesburg Public School District is school district located in Jamesburg, New Jersey. Its mailing address is 28 Front Street, Jamesburg, NJ, 08831.

8. Defendant, at all relevant times and as to all relevant actions described herein, was acting under the color of state law.

FACTUAL ALLEGATIONS

9. The School District is holding new student registration by appointment.

10. The School District notifies parents seeking to participate in the registration process that they must bring certain documents. The District requires parents to produce proof of residency, immunization records, and the child's birth certificate.

11. One of the requirements for proof of residency is listed as "Valid New Jersey State-Issued I.D. (New Jersey Driver's License)". (See <http://www.jamesburg.org/jps/In%20the%20News/New%20Student%20Registration%20Packet.pdf>).

12. New Jersey Administrative Code prohibits such a requirement. *N.J.A.C.* 6A:22-3.3(b) provides that immigration status does not impact eligibility to attend school; *N.J.A.C.* 6A:22-3.4(c) requires districts to consider the totality of the evidence presented in determining residency; and *N.J.A.C.* 6A:22-3.4(d) prohibits conditioning enrollment on the receipt of documents “pertaining to criteria that are not a legitimate basis for determining eligibility to attend school”

13. To get a driver’s license from the New Jersey Motor Vehicle Commission, a person must meet the six-point identification verification requirements. That system allows a person to bring in several documents, each of which is assigned a point value, the total of which must meet or exceed six points. *N.J.A.C.* 13:21-8.2 *See also* http://www.state.nj.us/mvc/pdf/Licenses/ident_ver_posterprint.pdf.

14. In any event, to satisfy the six point requirements, a person must possess at least one primary document, at least one secondary document, a verifiable social security number or a valid immigration status, and proof of address. *N.J.A.C.* 13:21-8.2.

15. The Jamesburg Public School District still requires a valid driver’s license.

FIRST CAUSE OF ACTION

VIOLATION OF THE AMENDMENT XIV OF THE UNITED STATES CONSTITUTION

(Equal Protection)

(brought directly under the United States Constitution and pursuant to *N.J.S.A.* 10:6-2(c))

16. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

17. The actions of Defendant described herein violated the right of the American Civil Liberties Union of New Jersey, its members, and the communities for which the ACLU-NJ advocates and has dedicated resources, to equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution, which forbids a state to “deny to any person within its jurisdiction the equal protection of the laws.”

18. School districts may not deny students an education based on their immigration status or their parents' immigration status.

19. By requiring a form of identification that is only available to residents who have Social Security Numbers or a valid immigration status to register a child for school, the School District denies an education to students with parents who are undocumented immigrants. It also discourages immigrants from attempting to enroll their children in the school district.

20. Unless Defendant's photo identification policy is enjoined, undocumented parents and their children will suffer irreparable harm. The ACLU-NJ's institutional mission of protecting access to education will also suffer irreparable harm.

SECOND CAUSE OF ACTION

VIOLATION OF ARTICLE I, PARAGRAPH 1 OF THE NEW JERSEY CONSTITUTION

(Equal Protection)

(brought directly under the New Jersey Constitution and pursuant to *N.J.S.A. 10:6-2(c)*)

21. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

22. The actions of Defendant described herein violated the right of the American Civil Liberties Union of New Jersey, its members, and the communities for which the ACLU-NJ advocates to equal protection of the law, in violation of Article I, paragraph 1 of the New Jersey Constitution, which states that “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

23. School districts may not deny students an education based on their immigration status or their parents' immigration status.

24. By requiring a form of identification that is only available to residents who have Social Security Numbers or a valid immigration status in order to register a child for school, the School District denies an education to students with parents who are undocumented immigrants. It also discourages immigrants from attempting to enroll their children in the school district.

25. Unless Defendant's photo identification policy is enjoined, undocumented parents and their children will suffer irreparable harm. The ACLU-NJ's institutional mission of protecting access to education will also suffer irreparable harm.

THIRD CAUSE OF ACTION
VIOLATION OF ARTICLE VIII, SECTION IV, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION
(Thorough and Efficient Education)
(brought directly under the New Jersey Constitution and pursuant to *N.J.S.A. 10:6-2(c)*)

26. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

27. The actions of Defendant described herein violate the right of the American Civil Liberties Union of New Jersey, its members' children, and the communities for which the ACLU-NJ advocates to a thorough and efficient education, in violation of Article VIII, Section IV, paragraph 1 of the New Jersey Constitution, which provides that "[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."

28. School districts may not deny students an education based on their immigration status or their parents' immigration status.

29. By requiring a form of identification that is only available to residents who have Social Security Numbers or a valid immigration status in order to register a child for school, the School District denies an education to students with parents who are undocumented immigrants. It also discourages immigrants from attempting to enroll their children in the school district.

30. Unless Defendant's photo identification policy is enjoined, undocumented parents and their children will suffer irreparable harm. The ACLU-NJ's institutional mission of protecting access to education will also suffer irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment against the Defendant as follows:

- (a) Declaratory relief, including but not limited to, a declaration that the Jamesburg Public School District's driver's license requirement is unconstitutional;
- (b) Immediate, preliminary and permanent injunctive relief, enjoining the Defendant's driver's license requirement;
- (c) Attorney's fees and costs associated with this action, pursuant to *N.J.S.A. 10:6-1 et seq.* and other relevant authority;
- (d) Any further relief as this Court deems just and proper and any other relief as allowed by law.

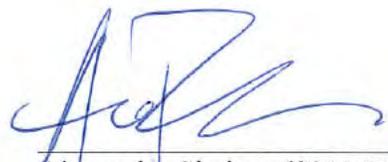
NO JURY DEMAND

Plaintiff does not demand trial by jury in this action.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates Alexander Shalom as trial counsel.

Dated: October 17, 2016



Alexander Shalom (021162004)
Senior Staff Attorney
ACLU-NJ Foundation
P.O. Box 32159
89 Market Street, 7th Floor
Newark, NJ 07102
973-854-1714
ashalom@aclu-nj.org

VERIFICATION

I, Diane Du Brule, hereby affirm under the penalty of perjury that the factual statements contained in the foregoing Verified Complaint are, to the best of recollection and belief, true and accurate.



Diane Du Brule
Interim Executive Director
American Civil Liberties Union
of New Jersey
89 Market Street, 7th Floor
P.O. Box 32159
Newark, NJ 07102

Dated: October 17, 2016

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, via counsel, hereby certifies that there are no other proceedings or pending related cases arising from the same factual dispute described herein. The matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification. Notwithstanding that Plaintiff is unaware of other controversies involving this Defendant, Plaintiff is simultaneously filing challenges to photo identification policies in several other districts throughout New Jersey. The other complaints – none of which have docket numbers yet – are being filed in Atlantic, Bergen, Hudson and Middlesex Counties. Plaintiff will provide docket numbers and additional information upon request.

Dated: October 17, 2016

By:



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Attorneys for Plaintiff

AMERICAN CIVIL LIBERTIES UNION	:	SUPERIOR COURT OF NEW JERSEY
OF NEW JERSEY,	:	MIDDLESEX COUNTY
	:	CHANCERY DIVISION
	:	
Plaintiff,	:	Docket No.
	:	
v.	:	
	:	CIVIL ACTION
JAMESBURG PUBLIC SCHOOL:	:	
DISTRICT	:	
	:	
	:	
Defendant.	:	ORDER TO SHOW CAUSE WITH
	:	TEMPORARY RESTRAINTS

THIS MATTER having been opened to the Court on application of Plaintiff for an order to show cause, seeking relief by way of temporary restraints pursuant to R. 4:52; and based upon the facts set forth in the verified complaint filed herewith; and it appearing therefrom that substantial and irreparable harm shall occur in the absence of such relief and before a formal Notice of Motion can be filed and heard; and notice having been given to counsel for Defendant; and for good cause shown;

IT IS on this _____ day of October, 2016, ORDERED that Defendants shall show cause on the _____ day of

_____, 2016, before the Hon. Frank Ciuffani, P.J. Ch., Superior Court of New Jersey, Chancery Division, 56 Paterson Street, New Brunswick, NJ 08903, or as soon thereafter as counsel can be heard, why an Order should not be entered:

- A. Preliminarily enjoining Defendant from requiring specific photo identification from residents who register their children for school; Defendant shall affirmatively inform parents that such identification is not required to register their children for school.
- B. Granting such other relief as the court deems equitable and just.

And it is further ORDERED that:

1. Pending further hearing on this Order to Show Cause, Defendant shall immediately be enjoined from requiring photo identification from residents who register their children for school; Defendant shall affirmatively inform parents that identification is not required to register their children for school.

And it is further ORDERED that:

2. Defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the plaintiff's attorney.

3. A copy of this Order to Show Cause, complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the

defendant within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

4. The Plaintiff must file with the court its proof of service of the pleadings on the defendant no later than three (3) days before the return date.

5. Defendant shall file and serve a written response to this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____, 2016. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge Frank Ciuffani, P.J. Ch., located at the Superior Court of New Jersey, Chancery Division, 56 Paterson Street, New Brunswick, NJ 08903. You must also send a copy of your opposition papers to the plaintiffs' attorney, whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee and serve your opposition on your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiffs are seeking.

6. The plaintiffs must file and serve any written reply to the Defendants' order to show cause opposition by _____, 2016. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a

copy of the reply papers must be sent directly to the chambers of Judge Ciuffani.

7. If the Defendant does not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of Order at least three days prior to the return date.

8. If the Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

9. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this Order to Show Cause, not counting the day you receive it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135.00 filing fee payable to the "Treasurer, State of New Jersey." You must also send a copy of your Answer to the plaintiffs' attorney whose name and address appears above, or to the plaintiff, if no attorney is

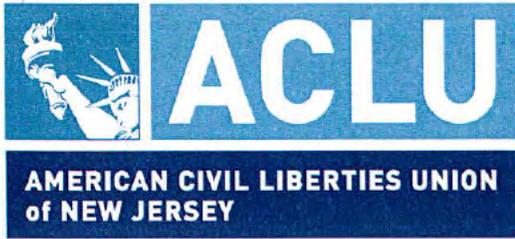
named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment will be entered against you by default. Please note: Opposition to the Order to Show Cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief Plaintiff demands.

10. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

11. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

Dated:

Hon. Frank Ciuffani, P.J. Ch.



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October 17, 2016

Hon. Frank Ciuffani, P.J. Ch.
Superior Court of New Jersey, Chancery Division
56 Paterson St.
New Brunswick, NJ 08903-0964

Re: *American Civil Liberties Union of New Jersey v. Jamesburg Public School District* Civil Action No.

Letter Brief in Support of Order to Show Cause with Temporary Restraints

Dear Honorable Judge Ciuffani:

Pursuant to R. 2:6-2(b), please accept this letter brief in lieu of a more formal brief in support of Plaintiff’s Order to Show Cause which seeks to immediately enjoin Defendant from requiring parents to produce particular forms of photo identification in order to register their children for public school.

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PRELIMINARY STATEMENT

The children of undocumented parents have an unquestionable right to a free, public education that is guaranteed through the State and Federal Constitutions and implemented through New Jersey’s Administrative Code. However, New Jersey school districts have not always abided by their legal obligations and instead have created impermissible barriers to school registration for children of undocumented parents. When the American Civil Liberties Union of New Jersey surveyed many New Jersey school districts in 2008, it found that 139 school districts unlawfully either required students or parents to produce Social Security numbers or to produce documents that indicate immigration status.¹

In the years since that study, the New Jersey Commissioner of Education has reminded school districts about their obligations to ensure access to education for the children of immigrants.² When districts have failed to heed these reminders, the ACLU has generally been able to inform districts of the state of the law³ and resolve disputes without the need to resort to

¹ Letter to Commissioner Davy, available at: <http://www.aclu-nj.org/files/4713/1540/4575/091508letterdavy.pdf>.

² October 25, 2010 Letter from Rochelle Hendricks, available at: http://www.aclu-nj.org/download_file/1365.

³ See American Civil Liberties Union of New Jersey, *Legal Backgrounder on Equal Access to Education in New Jersey*, August 29, 2008, available at: <http://www.aclu-nj.org/files/4113/1540/4574/090308facts.pdf>.

litigation.⁴ In 2014, despite the unambiguous state of the law, a school district insisted that it could exclude children – even citizen children – from access to a free, public education by imposing barriers to registration that prevent immigrant parents from completing the registration process.⁵ After the ACLU-NJ filed a lawsuit against the district, it relented and changed its policy to conform to the law.⁶

In the wake of that case, later that year, Plaintiff again surveyed all New Jersey school districts; this time 136 districts violated clearly established law by requiring photo identification to register children for school.⁷ After the ACLU-NJ threatened suit, most of the school districts changed their policies. The ACLU-NJ filed suit against seven districts to ensure access to education for the children of immigrants.⁸ Each of the cases settled after the districts agreed to change their restrictive policies.⁹

Two years later, several districts, including Jamesburg Public School District, are still enacting registration policies that unlawfully keep the children of immigrants from registering

⁴ See, e.g., *American Civil Liberties Union of New Jersey Annual Report*, 2011, page 18-19, available at: <http://www.aclu-nj.org/files/8813/1661/2977/092111annrep.pdf>.

⁵ Peggy McGlone, *The Star Ledger*, “Facing lawsuit, Butler schools agree to stop discriminating against immigrant parents,” March 11, 2014, available at: http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html?utm_source=twitterfeed&utm_medium=twitter.

⁶ *Id.*

⁷ ACLU-NJ [Press Release] “ACLU-NJ Warns Schools Statewide to Stop Discriminatory ID Policies” April 1, 2014, available at: <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>.

⁸ Peggy McGlone, *The Star Ledger*, “ACLU sues 7 school districts for discriminating against immigrant families,” June 2, 2014, available at: http://www.nj.com/education/2014/06/aclu_sues_7_school_districts_for_discriminating_against_immigrant_families.html.

⁹ Thomas Castles, *GM News*, “Discrimination suits against school districts dropped,” June 12, 2014, available at: <http://www1.gmnews.com/2014/06/12/discrimination-suits-against-school-districts-dropped/>.

for school. The ACLU-NJ brings this suit to vindicate the clear right of the children to attend public school regardless of the parents' immigration status.

STATEMENT OF FACTS

The published policy of the Jamesburg Public Schools requires parents who want to register their children for public schools to produce a valid New Jersey state-issued driver's license. *Verified Complaint*, ¶ 11. Undocumented immigrants are unable to obtain that form of identification. *Id.* at ¶¶ 13-14. Without a change in policy, undocumented parents in Jamesburg are unable to register their children for school. *Id.* at ¶¶ 20, 25, 30.

ARGUMENT

To be entitled to interim relief pursuant to *Rule* 4:52-1, a party must show (a) that the restraint is necessary to prevent irreparable harm, *i.e.*, that the injury suffered cannot be adequately addressed by money damages, which may be inadequate because of the nature of the right affected; (b) that the party seeking the injunction has a likelihood of success on the merits; (c) that the relative hardship favors the party seeking the restraint; and (d) that the restraint does not alter the *status quo ante*. *Crowe v. DeGoia*, 90 *N.J.* 126, 132-136 (1982). Plaintiff easily satisfies these requirements.

I. PLAINTIFF IS LIKELY TO SUCCEED ON ITS CLAIMS, AS DEFENDANT'S REGISTRATION POLICY REQUIRING PARENTS TO PROVIDE SPECIFIC FORMS OF PHOTO IDENTIFICATION VIOLATES THE STATE AND FEDERAL CONSTITUTIONS AND THE ADMINISTRATIVE CODE

Federal constitutional law is neither new nor unsettled: the right to a free public education cannot be conditioned on the immigration status of children or their parents. *Plyler v. Doe*, 457 *U.S.* 202, 228 (1982). The New Jersey Department of Education, in recognition of this bedrock equal protection principle, has promulgated regulations addressing those documents which can

be required to register a child for public school. *See N.J.A.C. 6A:22-3.4(d)*. The Jamesburg Public School District's written policy, which effectively precludes undocumented immigrants from registering their children for school, is directly counter to those regulations and violates principles of equal protection embedded in the Federal and State Constitutions.

In *Plyler*, the United States Supreme Court determined that a state can only "deny a discrete group of innocent children the free public education that it offers to other children residing within its borders," 457 *U.S.* at 230, if the denial "furthers some substantial state interest." *Id.* Such a standard is consistent with the Court's recognition of the value of primary and secondary education. As the Court explained:

The "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance." *Meyer v. Nebraska*, 262 *U.S.* 390, 400 (1923). We have recognized "the public schools as a most vital civic institution for the preservation of a democratic system of government," *Abington School District v. Schempp*, 374 *U.S.* 203, 230 (1963) (Brennan, J., concurring), and as the primary vehicle for transmitting "the values on which our society rests." *Ambach v. Norwick*, 441 *U.S.* 68, 76 (1979). "[A]s ... pointed out early in our history, ... some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." *Wisconsin v. Yoder*, 406 *U.S.* 205, 221 (1972). And these historic "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." *Ambach*, 411 *U.S.* at 77. In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.

[*Plyler*, 457 *U.S.* at 222.]

Plyler simply reinforced that which the Court had previously noted in *Brown v. Board of Education* about the importance of schooling: "education is perhaps the most important function

of state and local governments. . . . It is the very foundation of good citizenship. . . . [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* at 222-23, quoting *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

In assessing whether the state could demonstrate its substantial interest in denying an education to immigrant children, the *Plyler* Court rejected the three proffered state interests. *Id.* at 228-230. First, a state cannot justify denial of education based upon a desire “to protect itself from an influx of illegal immigrants.” *Id.* at 228. Second, there is no evidence that the “exclusion of undocumented children is likely to improve the overall quality of education in the State.” *Id.* at 229. Finally, the Court rejected the suggestion that exclusion was justified by the fact that undocumented children’s “unlawful presence . . . within the United States renders them less likely than other children to remain within the boundaries of the State, and to put their education to productive social or political use within the State.” *Id.* at 229-230. As a result, the Court held that “consistent with the Equal Protection Clause of the Fourteenth Amendment, [a state] may [not] deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.” *Id.* at 205.

The State Department of Education is clear on what *Plyler* requires. In an October 25, 2010, memorandum to all chief school administrators and charter school leaders, Acting Commissioner Rochelle Hendricks confirmed the fundamental holding of *Plyler*: “that undocumented children living in the United States could not be excluded from public elementary and secondary schools based upon their immigration status.” *Letter from Rochelle Hendricks*, available at: http://www.aclu-nj.org/download_file/1365. She explained: “Accordingly, school districts are prohibited from . . . making inquiries of students or parents that may expose their

undocumented status or engaging in any practices that ‘chill’ or hinder the right of access to public schools.” *Id.* This requirement is codified in *N.J.A.C. 6A:22-3.4*, which prohibits conditioning enrollment on the production of documents “pertaining to criteria that are not a legitimate basis for determining eligibility to attend school. They include . . . Social Security numbers.” *N.J.A.C. 6A:22-3.4(d)(4)*.

That is exactly what is being done by the Jamesburg Public Schools. While the School District is not directly requiring Social Security numbers, it is requiring forms of identification that require those numbers and/or a valid immigration status. Because there is no way for a parent to obtain the required identification without a Social Security number or valid immigration status, the School District is explicitly conditioning a child’s enrollment on the parents’ immigration status.¹⁰ Such a result is prohibited by *Plyler*.

There is no dispute: *Plyler* is still good law. In 2012, on the 30th anniversary of the decision, then-Assistant Attorney General Thomas E. Perez remarked that “*Plyler* represents the best of our collective ideals as a nation.” Remarks of Assistant Attorney General Thomas E. Perez at the American Civil Liberties Union’s *Plyler v. Doe* 30th Anniversary Event, Washington, D.C., June 11, 2012, available at: <http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-120611.html>. He further explained:

For the past three decades, *Plyler* has kept the door to opportunity open for millions of children across America. *Plyler* has stood for the proposition that public schools serve all children in this country, no matter where they were born. *Plyler* has represented the promise that the American dream should be accessible to all.

[*Id.*]

¹⁰ It is worth noting that in *Plyler*, the students were themselves undocumented. 457 *U.S.* at 206. It is possible that the parents of American citizen children are being denied access to public schools because of the *parents’* immigration status.

In recognition of the continued importance of *Plyler*, in 2011, the United States Department of Justice, Civil Rights Division and the United States Department of Education, Office for Civil Rights and Officer of the General Counsel issued guidance to local school districts reminding them of their obligations under *Plyler*. *Dear Colleague Letter*, May 6, 2011, available at: <http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>. The guidance was explicit: “To comply with . . . the mandates of the Supreme Court, you must ensure that . . . students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians.” *Id.* at 1-2. To that end, “districts may not request information with the purpose *or result* of denying access to public schools on the basis of race, color, or national origin.” *Id.* at 2 (emphasis added). While Jamesburg’s policy may not have a purpose of barring undocumented immigrants from school, it certainly has that result. As such, it violates *Plyler* and must be enjoined.

If there was any doubt about the propriety of a Driver’s License requirement in March 2014 when the ACLU-NJ sued the Butler School District, the United States Department of Justice and United States Department of Education resolved any uncertainty soon thereafter. In a publication dated May 8, 2014, the Departments explained:

A district should review the list of documents that can be used to establish residency to ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

For example, 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.

[United States Department of Justice and United States Department of Education, “Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents:” available at: <http://www.justice.gov/crt/about/edu/documents/plylerqa.pdf> (emphasis in original).]

The United States Supreme Court reached its conclusion in *Plyler* even taking into account that there is no right to public education found in the United States Constitution. *Plyler*, 457 U.S. at 221; *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). The New Jersey Constitution provides an affirmative right to public education. As such, while this court need not go beyond the clear and unambiguous precedent of *Plyler*, the State Constitution provides even greater reason to strike down the District’s policies. See *State v. Cooke*, 163 N.J. 657, 666 (2000) (recognizing that the Court has interpreted our State Constitution as affording greater protections than those afforded by its federal counterpart). As the New Jersey Supreme Court has explained:

The New Jersey Constitution charges the State with the fundamental responsibility to educate schoolchildren: “The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” N.J. Const. art. VIII, § 4, ¶ 1. In *Abbott v. Burke*, 119 N.J. 287, 384–85 (1990) (*Abbott II*), this Court held that students in the poorest urban districts were deprived of their constitutional right to a thorough and efficient education due to the State’s failure to provide adequate financial resources for their educational programming.

[*Abbott ex rel. Abbott v. Burke*, 206 N.J. 332, 340 n.1 (2011).]

In this case, the court need not even reach the question of whether the education is “thorough and efficient”; because of the School District’s photo identification policy, there is a total deprivation for certain children. Such a denial of access to a public school education violates the State Constitution.

Under both the State and Federal Constitutions, the law is clear: the children of immigrants cannot be denied access to schools as a result of their parents' immigration status. Because that is exactly what is occurring in Jamesburg, Plaintiff is likely to succeed on the merits.

II. PLAINTIFF EASILY MEETS THE REMAINING STANDARDS FOR GRANTING TEMPORARY RESTRAINTS

A. Restraints are necessary to prevent irreparable harm

As explained above, the District's policy prevents those without Social Security numbers or valid immigration status from registering their children from school. There is simply no way that an undocumented person (who lacks a Social Security number and valid immigration status) can obtain the form of identification that Jamesburg School District is demanding.

This injury is irreparable. Undocumented immigrant parents currently cannot register their children for school. There is no doubt that a delayed start to school has serious long-term implications. As President Obama has explained: "Study after study shows that the earlier a child begins learning, the better he or she does down the road." Barack Obama, *Remarks by the President on Early Childhood Education -- Decatur, GA*, February 14, 2013, available at: <http://www.whitehouse.gov/photos-and-video/video/2013/02/14/president-obama-early-childhood-education#transcript>. If these children are kept out of school they will be forever denied the benefits associated with early education.

B. The relative hardship favors entering immediate injunctive relief

The Court should grant immediate temporary restraints because, as described above, parents who lack state- or county-issued identification¹¹ will suffer a hardship, even if they are ultimately allowed to register their children for school at some point in the future. Registration for the Jamesburg Public School District is ongoing.

If the case is adjudicated in the normal course, without immediate injunctive relief, there is no assurance that it will be complete – and certainly not that appeals will be complete – before the end of the 2016-2017 school year or even the start of the next school year. In addition to the immediate threat facing parents without the required identification, it is impossible to overstate the harm suffered by children denied access to an education to which they are entitled. The children will fall behind their peers in ways from which they may never be able to recover. The data that supports the conclusion that children do better the earlier they are exposed to school are overwhelming. Children who participated in New Jersey’s Abbott Preschool program had improved achievement in language arts, literacy, math and science, compared to children not in the Abbott program. Barnett, W. Steven, Kwanghee Jung, Min-Jong Youn, Ellen C. Frede. *Abbott Preschool Program Longitudinal Effects Study: Fifth Grade Follow-Up*. National Institute for Early Education Research, 2013 available at: <http://nieer.org/sites/nieer/files/APPLES%205th%20Grade.pdf>. The benefits transcend education: In one study, children who had received comprehensive educational support services

¹¹ While undocumented immigrants are among those who lack these forms of identification, they are not alone. As we have seen in the context of voter identification laws, many populations (including the elderly, transgender people, students and the poor) have trouble obtaining these forms of identification. See, e.g., Lawyers Committee for Civil Rights Under Law, *Think Getting “Free” ID Is Easy? Think Again!*, available at: <http://www.lawyerscommittee.org/page?id=0046> (documenting instances where people were kept from the polls because of insufficient identification).

between the ages of three and nine were less likely to have been arrested, have problems with substance abuse, and be on food stamps. Reynolds, Arthur J., Judy A. Temple, Barry A.B. White, Suh-Ruu Ou, and Dylan L. Robertson. *Age 26 Cost-Benefit Analysis of the Child-Parent Center Early Education Program*. *Child Development*, 2011. Available at: <http://ts-si.org/files/doi101111j14678624201001563x.pdf>. Another study showed that children who attended a high-quality preschool as three- and four-year-olds were more likely to graduate from high school, earn higher wages and hold a job, and less likely to have committed a crime as adults. Schweinhart, Lawrence J., Jeanne Montie, Zongping Xiang, W. Steven Barnett, Clive R. Belfield, and Milagros Nores, *The High/Scope Perry Preschool Study Through Age 40: Summary, Conclusions, and Frequently Asked Questions*, High Scope Press, 2005. Available at: http://www.highscope.org/file/Research/PerryProject/specialsummary_rev2011_02_2.pdf.

On the other side of the balance, there will be no hardship to the Defendant to force it to simply *abide by existing law*. Plaintiff does not question Defendant's right to require proof of residency. *N.J.A.C.* 6A:22-3.4(a); *Martinez v. Bynum*, 461 U.S. 321, 328 (1983). There are several categories of documents that are explicitly permitted to be considered for that purpose. *N.J.A.C.* 6A:22-3.4(a). There is also no doubt that the law forbids denial of "enrollment based on a failure to provide a particular form or subset of documents without regard to other evidence presented." *N.J.A.C.* 6A:22-3.4(c). That is all that Plaintiff seeks to enjoin: Defendant's policy requiring two specific forms of identification, which requires a Social Security number and/or valid immigration status.

Clearly, the balance of hardships supports immediate injunctive relief.

C. The restraint does not alter the *status quo ante*

As noted, the *status quo* is that which is permitted by the United States Constitution, the State Constitution, and New Jersey regulations. The Defendant's policy alters the *status quo*, and does so unlawfully.

D. The public interest requires entering injunctive relief

It is frequently said that in determining whether to order immediate injunctive relief, the public interest must be considered. Indeed, "courts, in the exercise of their equitable powers, 'may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'" *Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Auth.*, 399 N.J. Super. 508, 520-21 (App. Div. 2008) quoting *Yakus v. United States*, 321 U.S. 414, 441 (1944).

Here the public interest requires injunctive relief. Individual students and their families have private interests in obtaining the education to which they are entitled. But, there is a societal value in ensuring access to education for all. As the Court explained in *Plyler*:

In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority.

[*Plyler*, 457 U.S. at 221-22.]

All of the factors therefore favor the granting of temporary restraints.

III. PLAINTIFF HAS STANDING TO BRING THIS CHALLENGE BECAUSE IT IS IMPACTED AS AN ORGANIZATION

“New Jersey courts take a broad and liberal approach to standing.” *NJ Citizen Action v. Riviera Motel Corporation*, 296 N.J. Super. 402, 415 (App. Div. 1997). As a result, “where the plaintiff is not simply an interloper and the proceeding serves the public interest, standing will be found.” *In re Quinlan*, 70 N.J. 10, 35 (1976). An organization such as the ACLU-NJ can obtain standing where “it has a real stake in the outcome of the litigation, there is a real adverseness in the proceeding, and the complaint ‘is confined strictly to matters of common interest and does not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual [member] and the [defendant].’” *NJ Citizen Action*, 296 N.J. Super. at 416 (quoting *Crescent Pk. Tenants Ass'n v. Realty Equities Corp.*, 58 N.J. 98, 109 (1971)).

In the pleadings before the court, the ACLU-NJ demonstrates that it meets New Jersey’s approach to organizational standing: the organization itself is impacted in a real sense. First, it is clear that the ACLU-NJ has a stake in the outcome of this litigation and has a long history of advocating on behalf of immigrant communities. See, e.g., *State v. Gaitan*, 209 N.J. 339 (2012) (addressing retroactive application of *Nunez-Valdéz*, *infra*); *State v. Nuñez-Valdéz*, 200 N.J. 129 (2009) (addressing impact of bad legal advice regarding immigration consequences on the validity of a guilty plea); *ACLU-NJ v. Hudson County, et al.*, 352 N.J. Super. 44 (App. Div.), *certif. denied* 174 N.J. 190 (2002) (seeking information on immigration detainees held in county jails so as to meet with detainees and offer legal assistance); *Riverside Coalition of Business Owners, et al. v. Township of Riverside*, Dkt. No. BURL-L-2965-06 (Law. Div. 2007) (challenge to local ordinance creating penalties for renting to or hiring undocumented immigrants).

The ACLU-NJ has also been specifically involved in efforts to ensure access to education for the children of immigrants. *See, e.g.*, ACLU-NJ [Press Release] “ACLU-NJ Warns Schools Statewide to Stop Discriminatory ID Policies” April 1, 2014, available at: <https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-police> (describing letters sent to 136 school districts demanding changes to discriminatory registration policies); Peggy McGlone, *The Star Ledger*, “Facing lawsuit, Butler schools agree to stop discriminating against immigrant parents,” March 11, 2014, available at: http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html? (explaining ACLU’s lawsuit against Butler’s discriminatory identification policy); *A.Z. v. Higher Education Assistance Authority*, 427 N.J. Super. 389, 398 (App. Div. 2012) (challenge to denial of state financial aid to citizen students of undocumented parents); “1 in 5 NJ Schools Puts Up Barriers for Immigrant Children” available at <http://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children> (describing ACLU-NJ advocacy efforts to end discriminatory registration policies for children of undocumented immigrants); Parastou Hassouri, *The Star Ledger* “Don’t Deny Immigrant Kids An Education” September 8, 2004, available at: <https://www.aclu-nj.org/theissues/immigrantrights/dontdenyimmigrantkidsanedu/> (op-ed written by ACLU-NJ Immigrant Rights Specialist criticizing schools’ Social Security number requirements).

As described in great detail in Paragraph 6 of the Verified Complaint, the ACLU-NJ has expended significant resources to advance its mission of protecting the rights of all New Jersey children to obtain primary, secondary and higher education free from impermissible barriers such as is at issue here. The process of documenting schools’ discriminatory registration policies –

which the ACLU has done four times on a statewide basis¹² – is extremely time consuming and, therefore, costly. The follow-up from these surveys also requires the expenditure of significant resources.¹³ At times, the ACLU-NJ has even dedicated litigation resources to ensuring access to education for all New Jerseyans.¹⁴ The investment of significant resources over a long period of time is strong evidence of the ACLU-NJ's organizational interest.

In short, the ACLU-NJ has a concrete, demonstrated and long-standing organizational interest in challenging Jamesburg's school registration identification policy.

¹² The ACLU-NJ conducted surveys in 2006 (<https://www.aclu-nj.org/news/2006/08/29/survey-immigrants-risk-exclusion-in-1-of-4-nj-schools>), 2008 (<https://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children>) and 2014 (<https://www.aclu-nj.org/news/2014/04/01/aclu-nj-warns-schools-statewide-stop-discriminatory-id-polic>); in advance of this lawsuit, the ACLU-NJ conducted another survey.

¹³ In 2006, the ACLU-NJ followed up with a letter to the Department of Education (<https://www.aclu-nj.org/files/6713/1540/4574/082906LtrDOE.pdf>); in 2008, the ACLU-NJ sent letters to both the Department of Education and the 187 offending school districts (<https://www.aclu-nj.org/news/2008/09/02/1-in-5-nj-schools-puts-up-barriers-for-immigrant-children>); in 2014, the ACLU-NJ sent letters to 136 school districts and has been in contact with the State Department of Education and the United States Department of Justice.

¹⁴ *A.Z.*, 427 *N.J. Super.* at 398; <https://www.aclu-nj.org/files/8813/1661/2977/092111annrep.pdf> (pages 18-19) (describing advocacy done on behalf of a parent whose children were unlawfully excluded from school); http://www.nj.com/education/2014/03/facing_lawsuit_butler_schools_agree_to_stop_discriminating_against_immigrant_parents.html

CONCLUSION

For the reasons set forth above, Plaintiff requests that its Order to Show Cause be granted, including immediate restraints against further implementation of the Jamesburg Public School District's requirement of specific forms identification.

Dated: October 17, 2016



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