

August 15, 2024

Delivered electronically to vserino@saugus.k12.ma.us, tWhittredge@saugus.k12.ma.us, rfisher@saugus.k12.ma.us, jhatch@saugus.k12.ma.us, and sMastrocola@saugus.k12.ma.us

Saugus Public Schools
School Committee
23 School Street
Saugus, MA 01906

RE: Saugus Public Schools' Student Enrollment Policy

Dear Members of the School Committee:

Lawyers for Civil Rights and Massachusetts Advocates for Children urge you to immediately revise the Student Admissions Policy for Saugus Public Schools (“SPS”). In enacting this Policy, the School Committee has exceeded its statutory authority by impermissibly denying enrollment to children whose families do not complete the Town of Saugus Census. In addition, the Policy’s overly-stringent residency and proof-of-identity requirements place an undue burden on immigrant and mixed-status families, violating rights guaranteed under both the U.S. and Massachusetts Constitutions. As further explained below, the Policy must be revised immediately, particularly with the imminent start of the 2024-2025 school year.

Lawyers for Civil Rights fights discrimination and fosters equity through creative and courageous legal advocacy, education, and economic empowerment. We have long worked in partnership with community allies to ensure that all schoolchildren receive equal educational opportunity. Massachusetts Advocates for Children is a children’s advocacy organization that works on an individual case basis with students, families, communities, and on a systemic level, so that all children across Massachusetts can learn, reach their potential, and thrive.

I. SPS’s Student Admission Policy

On August 10, 2023, the Saugus School Committee adopted a [Student Admissions Policy](#) that states the following:

- All children attending Saugus Public Schools must “be legal residents whose actual residence is in Saugus.”
- “Families who move to Saugus must complete the Town of Saugus census ... to be eligible to register their children in the school system.”
- Families must produce documents showing residency, occupancy, and identity. For evidence of identity, the acceptable documents listed are a Massachusetts driver’s license, a U.S. passport, a Massachusetts photo ID card, or other government-issued photo ID.

- The Superintendent may “request additional documentation,” “conduct an investigation,” and “continue to verify residency” throughout the school year.
- The Policy threatens “all applicable criminal and civil penalties” and restitution against anyone who violates the Policy.
- The Policy states that if a family moves from Saugus during the school year, “immigration records required by law” will be sent to the receiving school.

II. SPS’s Admissions Policy Violates State and Federal Law

The Town Census, residency, and proof-of-identity requirements — individually and cumulatively — violate rights guaranteed under the U.S. Constitution, the Massachusetts Constitution, and federal and state statutes prohibiting discrimination in public school admissions.

Under the Fourteenth Amendment of the U.S. Constitution, a local government may not “deny to any person within its jurisdiction the equal protection of the laws” on the basis of race or national origin. U.S.C.A. Const. Amend. XIV. As the U.S. Supreme Court held over forty years ago, it violates equal protection to exclude children from public education based on their immigration status. *Plyler v. Doe*, 457 U.S. 202, 230 (1982). Moreover, policies that have either the intent or the effect of excluding schoolchildren based on race or national origin are unlawful under both federal and state law.¹

Additionally, under the Massachusetts Constitution, the Commonwealth has a duty to provide an education “for *all* its children, rich and poor, in every city and town of the Commonwealth at the public-school level....” *McDuffy v. Sec’y of the Executive Office of Educ.*, 415 Mass. 545, 548 (1993) (emphasis in original); *see also* Mass. Const., Part II, ch. 5, § 2. To that end, Massachusetts law provides that “[e]very person shall have a right to attend the public schools of the town where he actually resides....” M.G.L., ch. 76, § 5.

While school districts may require that students be bona fide residents, *Martinez v. Bynum*, 461 U.S. 321 (1983), they may not enact policies that exceed their legal authority, nor may they impose onerous restrictions that chill educational access in violation of the above-cited laws.

¹ 42 U.S.C. §2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”); 34 C.F.R. §100.3(b)(2) (federal funding recipients may not “utilize criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color, or national origin....”) (emphasis supplied); M.G.L. ch. 76 § 5 (no student “shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation.”); 603 C.M.R. § 26.02(5) (“Public schools shall not use admissions criteria that have the *effect* of subjecting students to discrimination because of their race, color, [or] ... national origin....”) (emphasis supplied); *see also id.* § 26.02(2) (“No school shall discourage in any express or implied manner, applicants for admission because of race, color, [or]... national origin....”).

A. SPS's Town Census Requirement Is Invalid

There is no statutory authority for declaring a student ineligible to attend SPS if his or her family does not complete the Town of Saugus Census. Massachusetts law regarding town censuses requires registrars to annually compile a city or town census. M.G.L., ch. 51, § 4. This law also specifies the sole consequence to residents of failing to complete the census: potential removal from the active voting list. *See id.*

There is nothing in the law that authorizes a school committee to use a town census to bar children from school attendance. Any attempt to do so goes far beyond the legal authority of the school committee and is therefore invalid. *See Greater Boston Real Estate Bd. v. Dep't of Telecommunications & Energy*, 438 Mass. 197, 204 (2002) (agency action not authorized by legislation is invalid). Reinforcing this conclusion is the fact that school committees are referenced in the census law—but only as part of a requirement that the registrar send the census to the local school committee for budgetary purposes. The omission of any authority for a school committee to use the census to deny children the right to an education is telling. *See Commonwealth v. Muckle*, 478 Mass. 1001, 1003 (2017) (“the expression of one thing in a statute is an implied exclusion of other things not included in the statute”) (citation omitted). The Supreme Judicial Court has similarly emphasized the specific and narrow function of the town census. *See Opinion of the Justices*, 357 Mass. 787, 796 (1970) (“The takers of the annual listing under G.L. c. 51, s 4, make no judicial or quasi-judicial determination.”).

While a family's listing on the Saugus Town Census may certainly be considered by the Town as evidence (or even proof) of residency, the reverse is not true. A prospective student may not lawfully be excluded from school just because his or her family has not completed the Town Census. Saugus is impermissibly penalizing families for exercising their right to not participate in the Town Census.

B. The Policy Disproportionately Harms Immigrant and Mixed-Status Families

The Town Census, residency, and proof-of-identity requirements also violate state and federal law because they fall disproportionately on schoolchildren from immigrant and mixed-status families.

A bedrock principle of constitutional law is that children may not be excluded from public education based on immigration status. *Plyler*, 457 U.S. at 230. As the Massachusetts Attorney General has made clear in a guidance document to public schools, educational institutions have an affirmative obligation to protect this important right and to avoid any conduct that chills its exercise:

“It is critical that all school districts and officials in the Commonwealth ensure that all children residing in their jurisdictions have equal access to public education by ... avoiding information requests that have the purpose or effect of discouraging

or denying access to school on the basis of race, national origin, or immigration or citizenship status....”²

Importantly, as the Attorney General’s admonitions highlight, school policies are not just illegal if they are intentionally discriminatory; they are also unlawful if they have the “effect” of discouraging access. *See id.*; *see also* note 1, *supra*.

SPS’s Student Admissions Policy runs afoul of these laws. The Town Census requirement, for example, is unlawful not only because it is beyond the school committee’s authority to impose, but also because it disproportionately harms immigrant families. It is well established that recent anti-immigrant sentiments have created a chilling effect, making immigrant and mixed-status³ families less likely to participate in census questionnaires, due to stigma, fear of immigration consequences or even the threat of violence.⁴

Our legal organizations are aware of at least two cases—both involving immigrant families—where SPS’s illegal requirement impeded children’s enrollment and resulted in substantial time out of school. More families are undoubtedly impacted and harmed. This requires redress. The Policy must be revised immediately, particularly with the imminent start of the 2024-2025 school year.

Other requirements in the SPS Student Admissions Policy are similarly flawed. The “proof of identity” requirement, for example, states that schoolchildren will not be enrolled in the Saugus Public Schools unless their parents/guardians produce “evidence of identity” and only the following documents are accepted:

- a Massachusetts driver’s license,
- a U.S. passport,
- a Massachusetts photo ID card,
- or other government-issued photo ID.

Many families – especially newly arrived migrants – lack this documentation. While Massachusetts residents may now apply for drivers licenses regardless of their immigration status, many immigrants still do not have such a license—because they fear immigration consequences, they do not know about the law, or simply because they do not drive. As with the Town Census,

² Attorney General Advisory: Equal Access To Public Education For All Students Irrespective Of Immigration Status, available at [https://www.mass.gov/info-details/attorney-generals-advisory-regarding-equal-access-to-public-education-for-all-students-irrespective-of-immigration-status#:~:text=It%20is%20critical%20that%20all,citizenship%20status%3B%20\(2\)%20avoiding](https://www.mass.gov/info-details/attorney-generals-advisory-regarding-equal-access-to-public-education-for-all-students-irrespective-of-immigration-status#:~:text=It%20is%20critical%20that%20all,citizenship%20status%3B%20(2)%20avoiding).

³ Mixed-status families are comprised of individuals with different immigration and citizenship statuses. U.S. Department of Health & Human Services, *More information for immigrant households*, <https://www.healthcare.gov/immigrants/immigrant-families/> (last visited July 17, 2024).

⁴ Mike Schneider, *Simulation suggests 2020 census missed many noncitizens*, PBS News, <https://www.pbs.org/newshour/politics/simulation-suggests-2020-census-missed-many-noncitizens#> (last visited July 17, 2024).

while SPS may certainly accept the listed documents as proof of identity, it may not make the list exclusive.⁵

Other provisions of SPS's Student Admissions Policy similarly have a disparate impact on immigrant families. For example, the Policy starts by stating a requirement that children be "legal residents"—which creates the false impression that undocumented children are not allowed to enroll. This is flatly contrary to governing U.S. Supreme Court law. *See supra*. The Policy also refers to sending "immigration records required by law" to any school district to which a student transfers, a vague and unexplained reference that similarly implies that immigration status is relevant to school enrollment and provokes fear and intimidation. These policy requirements produce a chilling effect based on race and national origin.

Particularly viewed cumulatively, the inclusion of these provisions raises the question of whether SPS has purposefully phrased its Policy in such a way as to deter immigrant families from enrolling their children. That type of intentional discrimination would certainly be illegal. *See Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) (intentional discrimination violates Equal Protection Clause). But as the above authorities make clear, whether intentional or not, policies that have the effect of discouraging or deterring immigrant families from enrollment are equally unlawful. *See supra* note 1.

III. Conclusion

A new school year will be starting soon. Accordingly, we urge you to voluntarily revise SPS's Student Admissions Policy immediately to avoid legal action. At a minimum, the Town Census requirement and the references to "legal residents" and "immigration records required by law" must be removed. The "identity documents" list must also be expanded to include any document sufficient to establish identity, such as a military, school, or employment ID or another current ID that includes both the parent/guardian's photo and legal name.

More generally, we encourage a change in tone that makes clear that all residents of the Town are welcome to enroll in the Saugus Public Schools. As a start, in addition to the removal of the harmful and misleading statements noted above, SPS should consider leading the policy with what is now the final paragraph referencing the McKinney Vento Act exclusion and the statement that: "No child who actually resides in Saugus will be denied access to school because of his or her immigration status or the immigration status of his or her parent(s)/guardian(s)." A residency requirement can be enforced without chilling bona fide residents' and homeless families' rights to enroll their children.

We urge you to make these changes prior to the start of the 2024-25 school year on **August 27, 2024**, so that no schoolchildren will be unlawfully excluded or deterred from enrollment in the Saugus Public Schools .

Sincerely,

⁵ The sentence in the Policy stating that families who cannot produce the required documents "should contact the Superintendent" only serves to heighten the chilling effect.

Erika Richmond Walton, Esq.
Oren Sellstrom, Esq.
Lawyers for Civil Rights
erichmond@lawyersforcivilrights.org
osellstrom@lawyersforcivilrights.org
(919) 808-2738
(617) 988-0608

Diana Santiago, Esq.
Massachusetts Advocates for Children
dsantiago@massadvocates.org
(617) 874-5358