Indiana
DEPARTMENT OF EDUCATION

Dr. Jennifer McCormick
Superintendent of Public Instruction

Working Together for Student Success

TO: Superintendents of Schools

FROM: Deepali Jani, McKinney-Vento State Coordinator

DATE: July 4th, 2018

SUBJECT: Guidance for Districts Regarding Refugee Students

The Indiana Department of Education (IDOE) is committed to supporting your efforts to ensure that every student has access to a high-quality education in a safe, supportive and welcoming school environment. To that end, I am reaching out to you today with guidance for districts about fair and equitable enrollment practices and about supporting the needs of students and families who might be affected by the presidential executive order on immigration.

As you know, all children in the United States have a right to public education regardless of race, color, national origin, citizenship, immigration status, or the status of their parents/guardians. In Indiana, we take that responsibility very seriously and have made a steadfast commitment to welcoming all children and families – including immigrants and refugees and populations that in other states and other places have not been met with the same open doors, nurturing environment, and commitment to high expectations for ***all*** that we pride ourselves on in Indiana.

The attached document is a joint letter from the U.S. Departments of Education and Justice that provides guidance to school districts about ensuring we have fair enrollment processes that make all families, including immigrant and refugee families, feel welcome when they register their children for school. The letter is from 2014, but its relevance is just as pertinent today as it was four years ago. We must continue to provide all children equal access to public education regardless of citizenship or immigration status.

Additionally, I urge you to consider making counselors and mental health support services available to any students who are experiencing stress or anxiety stemming from the repercussions of the executive order.

I thank you for your attention and urgency in making sure all Indiana children and families feel welcome, respected and valued in our schools.

Sincerely,
Deepali Jani

Deepali Jani, McKinney-Vento Homeless Education State Coordinator
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U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

May 8, 2014

Dear Colleague:

Under Federal law, State and local educational agencies (hereinafter "districts") are required to provide all children with equal access to public education at the elementary and secondary level. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law. We are writing to update the previous Dear Colleague Letter on this subject that was issued on May 6, 2011, and to respond to inquiries the Departments received about the May 6 Letter. This letter replaces the May 6 Letter.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. *See* 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

Additionally, the United States Supreme Court held in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), that a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise. Denying "innocent children" access to a public education, the Court explained, "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. . . . By denying these children a basic education, we deny

them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." *Plyler*, 457 U.S. at 223. As *Plyler* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student's entitlement to an elementary and secondary public education.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and 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. Moreover, 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. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).[1] For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district. A district should review the list of documents that can be used to establish residency and 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.

As with residency requirements, rules vary among States and districts as to what documents students may use to show they fall within State- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.

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[1] Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child's parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(1).

Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. *See* 5 U.S.C. §552a (note).[2] If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish to review the documents your district requires for school enrollment to ensure that the requested documents do not have a chilling effect on a student's enrollment in school. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

We are also attaching frequently asked questions and answers and a fact sheet that should be helpful to you. Please contact us if you have additional questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov or the Department of Education Office of the General Counsel at (202) 401-6000. You may also visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm for the OCR enforcement office that serves

[2] Federal law provides for certain limited exceptions to this requirement. *See* Pub. L. No. 93-579, § 7(a)(2).

your area. For general information about equal access to public education, please visit our websites at http://www.justice.gov/crt/edo and http://www2.ed.gov/ocr/index.html.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Philip H. Rosenfelt
Deputy General Counsel
Delegated the Authority to
Perform the Functions and
Duties of the General Counsel
U.S. Department of Education

/s/

Jocelyn Samuels
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Attachments

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

Fact Sheet: Information on the Rights of All Children to Enroll in School

All children in the United States are entitled to equal access to a basic public elementary and secondary education regardless of their actual or perceived race, color, national origin, citizenship, immigration status, or the status of their parents/guardians. School districts that either prohibit or discourage, or maintain policies that have the effect of prohibiting or discouraging, children from enrolling in schools because they or their parents/guardians are not U.S. citizens or are undocumented may be in violation of Federal law.

Below are some examples of acceptable enrollment policies, such as requesting proof of residency in the school district, as well as policies that may not be used by schools to deny enrollment to your child.

Proof of Residency in the School District.

- School officials may request proof that you live within the boundaries of the school district. School districts typically accept a variety of documents for this purpose, such as copies of phone and water bills, lease agreements, affidavits, or other documents. A school district's requirements to establish residency must be applied in the same way for all children.

- A school district may not ask about your or your child's citizenship or immigration status to establish residency within the district, nor may a school district deny a homeless child (including a homeless child who is undocumented) enrollment because he or she cannot provide the required documents to establish residency.

- While a school 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.

Proof of Age.

- School officials may request documentation to show that a student falls within the school district's minimum and maximum age requirements. School districts typically accept a variety of documents for this purpose, such as a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a birth certificate; or previously verified school records.

- Although a school district might request documents such as those listed above to verify your child's age, a school district may not prevent or discourage your child from enrolling in or attending school because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.

Social Security Numbers.

- Some school districts request a student's social security number during enrollment to use as a student identification number. If a school district requests a student's social security number, it must: (1) inform you and your child that providing it is voluntary and that refusing to provide it will not bar your child from enrolling in or attending school, and (2) explain for what purpose the number will be used.

- A school district may not prevent your child from enrolling in or attending school if you choose not to provide your child's social security number.

- A school district may not require you to provide your own social security number in order for your child to enroll in or attend school.

Race or Ethnicity Data.

- School districts have some Federal and state obligations to report race and ethnicity data about the students in their schools. A school district may request that you provide your child's race or ethnicity for this purpose.

- However, a school district may not bar your child from enrolling if you choose not to provide your child's race or ethnicity.

If you want to learn more about your rights and the rights of your child when enrolling in public school, or if you believe that a school district is violating Federal law, you may contact the following government agencies:

- Department of Justice, Civil Rights Division, Educational Opportunities Section
  Telephone: (877) 292-3804 (toll-free)
  Fax: (202) 514-8337
  Email: education@usdoj.gov

- Department of Education, Office for Civil Rights
  Telephone: (800) 421-3481 (toll-free)
  Email: ocr@ed.gov
  If you wish to fill out a complaint form online with the Department of Education, you may do so at http://www.ed.gov/ocr/complaintintro.html

- Department of Education, Office of the General Counsel
  Telephone: (202) 401-6000
  Fax: (202) 205-2689

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents

These Questions and Answers are intended to assist states and school districts in meeting their legal obligations to ensure that their enrollment[1] policies and practices at the elementary and secondary school levels do not discriminate on the basis of race, color, or national origin, and do not bar or discourage students' enrollment in elementary and secondary school based on their or their parents' actual or perceived immigration status. The U.S. Departments of Education and Justice encourage states and districts to proactively implement supportive enrollment policies and practices that create a welcoming and inclusive environment for all students.[2]

Documentation

Q - 1. Should a district inquire into the immigration or citizenship status of a student or parent[3] as a means of establishing the student's residency in the district?

A - 1. No. Immigration or citizenship status is not relevant to establishing residency in the district, and inquiring about it in the context of establishing residency is unnecessary and may have a chilling or a discouraging effect on student enrollment.

Q - 2. Are students, except homeless students as provided by Federal statute, required to show current residency in a district in order to enroll in a district school?

A - 2. A state or district may establish bona fide residency requirements and thus might require that all prospective students, except homeless students as defined and provided by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 *et seq.*, furnish proof of residency within the district.

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[1] For purposes of this guidance, the term "enrollment" also means registration, matriculation, or attendance in school.

[2] This Questions and Answers document accompanied the Dear Colleague letter on the Rights of All Children to Enroll in School, issued by the U.S. Departments of Education and Justice on May 6, 2011. This document has been updated to respond to additional questions received since the Dear Colleague letter was issued in 2011.

[3] For purposes of this guidance, the term "parent" also means guardian or other responsible person under state or local law.

Q - 3. How can students meet requirements to show current residency in a school district?

A - 3. Rules vary among states and districts on what forms of documentation can be used to prove residency within a district. Districts typically accept a variety of documents as proof of residency, such as a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from a parent's employer that is written on company letterhead.

A parent must be permitted to establish residency using any of the alternative methods provided for by state or local law. States and districts cannot apply different rules, or apply the same rules differently, to children based on their or their parents' actual or perceived race, color, national origin, citizenship, immigration status, or other impermissible factor. All students must be treated equally.[4]

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.

Q - 4. Can a homeless child, including an undocumented homeless child, ever be required to show residency in a district in order to enroll in a district school?

A - 4. No. Even where a district has valid proof of residency requirements, it must exempt from those requirements all children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. These children and youth have a right to enroll in school, even if their families cannot produce the documents that would otherwise be required to prove residency.

The McKinney-Vento Act defines the term "homeless children and youth" as including, in part, "children and youths who are sharing the housing of other persons due to loss of housing,

[4] Title IV of the Civil Rights Act of 1964, which is enforced by the Department of Justice, prohibits school districts from taking actions that deprive students of equal protection of the laws. Title VI of the Civil Rights Act of 1964, which is enforced by the Department of Education, and by the Department of Justice upon referral from a Federal funding agency or through intervention in an existing lawsuit, prohibits discrimination on the basis of race, color, or national origin.

economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement," as well as children of migratory agricultural workers. Additional information regarding the McKinney-Vento Homeless Assistance Act is available at www.ed.gov/programs/homeless/guidance.pdf.

Q - 5. How can students show they meet a school's age requirements?

A - 5. As with residency requirements, rules vary among states and districts as to what documents students may use to show they fall within state- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. Depending on the state or district, alternative documents could include, but are not limited to: a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a birth certificate; previously verified school records; or any other documents permitted by law. School districts should make parents aware of any alternatives that exist as part of their efforts to ensure a welcoming and inclusive environment for all students.

Requests for documents such as birth certificates must not unlawfully bar or discourage a prospective student from enrolling and attending school, including a student who is undocumented or has parents who are undocumented, or a child or youth who is homeless as defined by the McKinney-Vento Homeless Assistance Act (see Q-4, above). A school district may not bar or discourage a student from attending school because the student lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate. Requests for documentation also may not discriminate, or have the effect of discriminating, on the basis of race, color, or national origin. All students must be treated equally in the enrollment process.

A district, moreover, should not use a student's birth certificate or other documentation provided by a parent as a basis for inquiring into the immigration status of the student, his or her parents, or other family members. Such requests would likely have a discouraging effect on the enrollment of a student on the basis of immigration status.

Q - 6. What if a parent is reluctant to provide a copy of his or her child's foreign birth certificate, fearing that doing so would lead to questions about the child's or the parent's immigration or citizenship status?

A - 6. School districts are encouraged to take proactive steps to educate parents about their children's rights and to reassure them that their children are welcome in district schools. For example, state laws typically permit a district to use a variety of documents to establish the age of

a child. A district should publicize that it will use a foreign birth certificate, baptismal record, or alternative document in the same manner that it will use a United States birth certificate, baptismal record, or alternative document: that is, solely to establish the age of a child.

As previously emphasized, a district must apply its rules and standards for documentation of age or residency in the same way to everyone, regardless of race, color, national origin, citizenship, or immigration status. A foreign-born child who is unable or unwilling to furnish a birth certificate should have the same options to enroll in school and should be treated no differently than a United States citizen child who does not have or otherwise may not be able to produce a birth certificate.

Q - 7. In light of the Dear Colleague letter, should districts refrain from asking for students' social security numbers?

A - 7. The Federal government does not prohibit states or districts from collecting the social security numbers of prospective or current students. States and local school districts must decide, however, whether they have a legally permissible reason to collect this information. If they choose to collect social security numbers, they should take steps to ensure the confidentiality of the social security numbers and that they are stored securely. In addition, they must follow Federal laws regulating the use of that information. For example, under governing Federal laws, if a district requests social security numbers, it must inform individuals that the disclosure is voluntary, and must explain both the statutory or other basis for seeking the numbers and how the district intends to use the numbers. *See* Privacy Act of 1974, Pub. L. No. 93-579, § 7, 5 U.S.C. § 552a (note), available at http://www.ssa.gov/OP_Home/comp2/F093-579.html.

As the Dear Colleague letter makes clear, a district cannot deny enrollment to a student if he or she (or his or her parent) chooses not to provide the student's social security number.[5] Districts have alternatives to requesting social security numbers. For example, a district seeking to have student identification numbers could decide to assign a randomly selected number to each student. In this way, the state or district would avoid any chilling effect that a request for social security numbers may have on the enrollment of students because of their race, color, national origin, citizenship, or immigration status.

A school district that opts to request social security numbers should make clear in all enrollment and registration documents, including forms, websites, and communications with parents, that the provision of the child's social security number is voluntary, and that choosing not to provide a social security number will not bar a child's enrollment.

[5] Similarly, a school district cannot deny a student enrollment if his or her parent chooses not to provide his or her own social security number.

Q - 8. How can a school district distinguish between (a) information that it should or must collect, and (b) information that it may not collect because doing so may discourage enrollment or attendance?

A - 8. There is typically only minimal information that a district is required to collect under state law for a student to be able to enroll, such as proof of age, immunization history, and residency within the district. Both the state and the district must act in compliance with the U.S. Constitution and valid Federal or state laws, including their obligations not to discriminate, or implement policies that have the effect of discriminating, on the basis of race, color, or national origin. In doing so, states and districts should also assess their current policies to determine whether they are doing anything that may have the effect, albeit unintended, of discouraging the enrollment of undocumented children, such as asking for immigration papers or social security numbers, or requiring a driver's license or state-issued identification from a parent. Such practices and policies, once identified, should be changed to eliminate any possible chilling effect on enrollment.

Q - 9. In order to avoid discouraging enrollment, should a school district enroll any child who comes its way and ask for documentation later, after the child is enrolled?

A - 9. As noted above, school districts might require that prospective students furnish proof of residency in a district and/or age prior to enrollment, except for any children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. However, districts may also choose to wait until students are already enrolled before asking for any additional documentation that may be required under state or Federal law, such as student demographic data. By choosing to wait to collect additional information, districts may create a more welcoming and inclusive atmosphere for all prospective students. Requests for documentation must not discriminate, or have the effect of discriminating, on the basis of race, color, national origin, citizenship, or immigration status.

Q - 10. Once in possession of personal information about a student, are there circumstances when a school district may disclose that information from a student's education records without the consent of the student or a parent?

A - 10. There are circumstances when a school district may disclose information from a student's education records, *but these are limited and unlikely to be applicable in the majority of situations school districts confront*. The Family Educational Rights and Privacy Act of 1974 (FERPA) generally prohibits school districts that receive Federal funds from the Department of Education from disclosing information from a student's education records that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). *See* 20 U.S.C.

§1232g. There are some limited exceptions in FERPA to the requirement that written consent must be obtained before disclosing personally identifiable information from students' education records, *see* 34 C.F.R. § 99.31, as well as narrow, enumerated circumstances under which Federal immigration laws require or permit a school district to provide specific information about a student to another Federal, state, or local government entity. One such circumstance is where the issuance of a non-immigrant visa to a student—and the maintenance of that student's non-immigrant status—is conditioned on the student's attendance at a specific school. Note that in that case, a school district would have preexisting information about the student that he or she would have presented to the school in order to obtain the underlying visa, and so the school would not have any reason to initiate a request for information about immigration status.

Q - 11. How should a school district communicate the requirements for enrollment with parents who have limited proficiency in English?

A – 11. For limited English proficient parents of a student seeking to enroll in a school, a district must meaningfully communicate material information about enrollment – *e.g.*, translate a document into languages other than English and have some method of responding to those parents' questions – as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703. Material information could include alternative means to establish state-permitted residency and age requirements, if any. If a district asks for a social security number, material information would also be the fact that a district cannot deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number.

Additional Proactive Support Measures That States and Districts Can Take

Q - 12. What can schools do proactively to show parents that their children are welcome, regardless of their immigration or citizenship status?

A - 12. The Dear Colleague letter encourages states and districts to review enrollment policies and practices carefully to make sure they are consistent with the law and do not have a chilling effect on the willingness of parents to enroll their children. Any problems should be corrected.

In addition, the U.S. Departments of Education and Justice encourage districts to be proactive in notifying parents of their rights to send their children to public school. For example, districts can conduct outreach to communities to inform parents that all students who are residents in the district are welcome to attend the district's schools.

Q - 13. Should districts provide staff training on how to avoid violating the law in this area?

A - 13. Staff training at the school and district level is encouraged. Ultimately, the state and district have the legal responsibility to ensure that they are complying with Federal law. Staff training helps facilitate that compliance.

Q - 14. What is the role of State Educational Agencies (SEAs) in ensuring that students are not improperly excluded from school?

A - 14. The Dear Colleague letter issued May 6, 2011, and revised and reissued on May 8, 2014, is intended to remind both districts and states of their obligations under existing law. As recipients of Federal funds, SEAs are responsible for monitoring compliance with Federal anti-discrimination laws. Because laws regarding school enrollment, including requirements for proof of age and residency, vary from state to state, this is an area in which leadership from SEAs is needed and can be particularly effective. SEAs are encouraged to review existing practices and policies and to assist their districts in understanding the types of practices that will comply with state requirements regarding school enrollment without violating constitutional and Federal anti-discrimination requirements. Specifically, SEAs should work to ensure that their school districts' enrollment practices do not unlawfully discourage or bar students, including students who are undocumented or have parents who are undocumented, from school.