COMMONWEALTH OF MASSACHUSETTS

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August 31, 2017

Roy E. Belson
Superintendent
Medford Public Schools
489 Winthrop Street
Medford, MA 02155

Re: Enrollment Policies and Procedures

Dear Superintendent Belson:

You have asked us for guidance on the obligations of school districts to enroll students who may be present in the United States on a B-1 or B-2 visitor visa. We hope you will find the following information helpful.

As you know, state and federal law collectively require school districts to provide all elementary and secondary students with equal access to public education—irrespective of race, color, sex, gender identity, religion, national origin, sexual orientation, disability, *or immigration status*. See Plyler v. Doe, 457 U.S. 202 (1982) (a child's immigration or citizenship status, or that of his or her parent or guardian, is not relevant to the child's right to a public education); see also Attorney General Advisory: Equal Access to Public Education for All Students Irrespective of Immigration Status (March 2, 2017). In light of this basic obligation, a school district should *not* preclude any student from enrolling in school based solely on the fact that the student appears to have entered the United States on a B-1 or B-2 visa.

As a general matter, school officials need only confirm a child's age and residency before enrolling him or her in school.[1] Schools should not request or maintain information relating specifically to the immigration status of students or their parents, including but not limited to, passport or visa information.[2] Such information generally is not necessary to a school's

[1] With certain exceptions, state law also requires proof of immunization before a student enrolls in school. See G.L. c. 76, § 15, 105 CMR 220, and guidance from the Department of Public Health. The exceptions include homeless students, per the federal McKinney-Vento Act, as well as students with medical and religious exemptions.

[2] There may be very limited circumstances in which schools have a legitimate reason to collect passport or visa information—such as a school trip abroad. Additionally, to the extent schools are required to collect certain information because of their participation in particular programs—such as the Student and Exchange Visitor Program—they should continue to do so. However, passport and visa information should not be collected or maintained in the regular course, including as part of the registration or enrollment process. See Attorney General Guidance: Rights and Obligations of Schools in Response to ICE Requests for Access or Information (May 18, 2017).

educational function, and collecting it creates a risk of deterring the enrollment of undocumented and non-citizen students in violation of state and federal law. To the extent that an individual volunteers a passport as documentation of a student's age, it should be reviewed for that limited purpose only. The same applies to a parent who volunteers a passport for another purpose, such as photo identification. Under these circumstances, the school should not look beyond that purpose to collect or retain information about the individual's immigration status.

State law provides that "every person shall have a right to attend the public schools of the town where he [or she] *actually resides* . . . ." G.L. c. 76, § 5 (emphasis added). While the statutory meaning of residency varies, the Department of Elementary and Secondary Education interprets the term "actually resides," as used in G.L. c. 76, § 5, literally, to mean where the student actually lives or has a personal presence. This interpretation is supported by Martinez v. Superintendent of Schs. of Swampscott, 2013 Mass. App. LEXIS 121, *4-5 (Mass. App. Ct. Feb. 1, 2013) (unpublished) (enjoining Swampscott public school from unenrolling student for period of time he actually lived in town); Mulrain v. Board of Selectman of Leicester, 479 N.E.2d 745, 746 (Mass. App. 1985) (explaining "actual residence" has been distinguished from the legal concept of "inhabitant," and is as a matter of "personal presence, with or without any implication of civic privileges or duties"); see also, Ames v. Town of Wayland, 2014 Mass. Super. LEXIS 127, *6-9 (Mass. Super. Ct. 2014) (requiring town to enroll student where evidence likely to establish student actually lived there, despite also living in another town under joint custody agreement). "Actual residence" is a matter of personal presence with an intention to remain. See, e.g., Lydia D. v. Payzant, 2003 Mass. Super. LEXIS 471, *27-28 (Mass. Super. Ct. 2003) ("[d]omicil and residence are established by both a physical presence and an intent to remain, at least for a while").

Actual residence generally may be established by any of a variety of documents, such as a utility bill, deed, mortgage payment, property tax bill, lease, Section 8 agreement, notarized letter from someone with whom the student resides, W2 or payroll stub, bank or credit card statement, or letter from a government agency.

Although the fact that a student (or the student's parent) holds a visitor visa, such as a B-1 or B-2 visa,[3] may suggest that the student does not intend to remain in the school district, that is not dispositive. There are a number of circumstances in which an individual who has entered the United States on a visitor visa may nonetheless have a right to remain in the country or otherwise intend to do so. For example, an individual may have applied for political asylum, be eligible for temporary protected status, or may have otherwise adjusted his or her status since entry. Moreover, a parent's immigration status does not necessarily indicate anything about the status of his or her child. In fact, the existence of a visa may indicate very little about either the

[3] Federal regulations specifically prohibit a person in B-1 or B-2 status from enrolling in a course of study in the United States. See 8 C.F.R. 214.2(b)(7). Individuals who do so may not be able to extend their visa or obtain certain other visas. While this condition on B-1 and B-2 status may have significant consequences for a visa-holder, it has no bearing on a public school's obligation to enroll students who otherwise meet the legal requirements of age and residency. We are not aware of any law that prohibits a school district from enrolling students under these circumstances. Indeed, as set forth above, it is not the role of school officials to make determinations as to immigration status, including whether a visa is currently valid, whether a student has overstayed or otherwise failed to comply with the terms of a visa, whether a student has another lawful status, etc.

child's actual immigration status or actual residency. It is not the role of school officials to make determinations as to immigration status. Instead, the school must determine whether a student seeking to enroll in school meets the requirement of actual residency, without taking into consideration the student's or family's immigration status.

Furthermore, it is our position, consistent with the rights and obligations established in Plyler v. Doe, supra, that students with visitor visas who intend to remain in a particular Massachusetts city or town have a right to enroll in school there without interference. School officials should not take any steps that may "chill" or dissuade students from enrolling on the basis of immigration status, including, but not limited to, asking to see the student's or parent's passport, inquiring about a student's or parent's immigration status, or suggesting that a student or parent may face penalties if the student enrolls in school.[4]

Finally, to the extent that any school already has collected student or parent passport or visa information, we suggest that the school remove any such documents or information from students' files.

We hope this information is helpful. Please contact either of us should you have additional questions or concerns.

Sincerely,

Rhoda E. Schneider

Rhoda E. Schneider
General Counsel
Dept. of Elementary and Secondary Education

Genevieve Nadeau

Genevieve C. Nadeau
Chief, Civil Rights Division
Office of the Attorney General

[4] Through the Student Information Management System (SIMS), the Department of Elementary and Secondary Education collects data from public schools on "immigrant students" for purposes of certain federal grants – but this does not require any information on a student's immigration status. Rather, the SIMS data handbook uses the definition in the federal grant program, which covers a student who is: (1) age 3-21; (2) was not born in any of the 50 states, the District of Columbia, or the Commonwealth of Puerto Rico; and (3) has not attended K-12 school in the U.S. for more than three full academic years. While the federal grant term ("immigrant children and youth") may cause some confusion with "immigration" matters, this SIMS data collection does not require schools to inquire into a student's citizenship status or visa status. Schools need not and should not ask students or parents to disclose or document their immigration status for school enrollment.