Title IV of the Civil Rights Act of 1964 (“Title IV”), 42 U.S.C. § 2000c; Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d, and Title VI’s implementing regulations, 34 C.F.R. pt. 100, and 28 C.F.R. § 42.104(b)(2). The Districts also have directly violated Complainants’ rights pursuant to the clear holding of Plyler v. Doe, 457 U.S. 202 (1982), which provides that a state may not deny access to public education to any child residing in the state on the basis of a child’s or parent’s immigration status.[2]

We request that the North Carolina DPI—the agency charged with leading the public schools in the state—take all necessary steps to prevent this practice from occurring in the future. We are eager to work with the DPI to develop solutions to this troubling practice. Not one more student should be prevented from enrolling in school; therefore, we respectfully request your response by March 3, 2014.

Respectfully,

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February 13, 2014

VIA FACSIMILE (202) 514-8337,
U.S. MAIL, AND ELECTRONIC MAIL

Anurima Bhargava, Chief
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Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section - PHB
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Email: education@usdoj.gov

Re: Letter Submitted in Support of:
CONSOLIDATED CIVIL RIGHTS COMPLAINT: C.V., on behalf of herself and all others similarly situated vs. Buncombe County Schools (Asheville, NC); and F.C., on behalf of himself and all others similarly situated vs. Union County Public Schools (Monroe, NC).

Dear Chief Bhargava:

We represent children who have been denied, delayed, and discouraged in their attempt to access public education, and we file the attached consolidated civil rights complaint on their behalf with your agency. The present letter is submitted in support of the legal claims described in the consolidated complaint, and it is intended to provide additional context and to illustrate the broader problem of discrimination in North Carolina public schools against unaccompanied children—children who have come to the United States from another country without a parent or legal guardian to care for them.[1] These children are being turned away at the schoolhouse door because of their limited English proficiency, their age, and their national origin. These practices violate the nondiscrimination provisions of Title IV, Title VI and the clear holding of *Plyler v. Doe*.[2]

[1] For background on unaccompanied children, see pages 2-4 of the Consolidated Complaint.
[2]

Advocates from two North Carolina-based organizations that represent Complainants have first-hand experience with unaccompanied children and those who have been entrusted with their care, known as sponsors. Sponsors are required to ensure that the child is enrolled in school. In North Carolina, however, unaccompanied children are being prevented from enrolling in school. Sponsors consistently report difficulty enrolling their unaccompanied children in public school; however, most of these children are unwilling or unable to come forward and complain about the denial to the federal government. As such, Complainants bring the attached consolidated complaint on behalf of similarly situated currently-classified, formerly-classified, and future unaccompanied children in their respective school districts. Absent systemic change, the widespread denial or delay of education to unaccompanied children in North Carolina will persist.

DENIAL, DELAY, AND DISCOURAGEMENT OF EDUCATION TO UNACCOMPANIED CHILDREN IS WIDESPREAD IN NORTH CAROLINA

Despite federal and state law requiring that education be available to all children present in North Carolina on an equal basis, unaccompanied children are being denied enrollment, delayed from enrolling, and discouraged from enrolling in North Carolina public schools. While only two Complainants have come forward, the experiences of two North Carolina advocates for children, as set forth below, demonstrate the widespread nature of these practices.

Danielle Hilton is a Project Coordinator within the Immigrant Justice Program at Legal Services of Southern Piedmont ("LSSP") in Charlotte, North Carolina. LSSP utilizes direct legal services, community outreach and education, and systemic advocacy to ensure indigent and low-income people, including immigrants, have access to justice. Unaccompanied children and their sponsors constitute a recognizable plurality of the immigrants LSSP serves. Prior to joining LSSP, Hilton worked as the Immigrant Outreach Specialist and Coordinator for the United States Department of Justice Legal Assistance for Victims grant in Charlotte. In this role, she coordinated services for victims of domestic violence, helped them navigate the restraining order process in civil courts as se

sponsors usually takes place when they agree to assume sponsorship of the unaccompanied child.

To facilitate the education mission of LSSP, Hilton helps prepare sponsors to meet their responsibilities and brings resources that will promote the welfare of the child to their attention. In 2012, LSSP received roughly thirty (30) sponsor referrals per month for unaccompanied children living in North Carolina and South Carolina. In 2013, Hilton saw that number increase more than threefold to approximately 100 sponsor referrals per month. Over this same period, Hilton can corroborate government data and media reports that the incoming unaccompanied children population is getting younger. In 2012, the average unaccompanied minor was sixteen (16) years old; in 2013, the average age was twelve (12) years old.

One of the most difficult obstacles sponsors and unaccompanied children face is enrolling the child in school. Since she began working with this population at LSSP, Hilton has encounter

proceedings. One administrator noted that she did not want a child who was in immigration court "mixing with the other students."

Matt Ellinwood is a policy analyst and attorney with the North Carolina Justice Center's Education and Law Project ("ELP") in Raleigh, North Carolina. In this role, Ellinwood works to ensure that all children in North Carolina have equal and fair access to public education, that all parents have the information and access they need to participate in their children's educations, and that public schools secure the funding needed to provide a high-quality education to every child.

In Ellinwood's experience advocating for children in North Carolina, only unaccompanied children who have come to the school from another country are turned away for being "too old to enroll." In Ellinwood's experience, this is not an unusual experience for unaccompanied children in North Carolina. Unaccompanied children who are the appropriate age to be eligible to enroll in school have been denied enrollment in some cases and faced significant delays in others because they do not have enough credits to be placed in the grade that generally corresponds to their age. Similarly, unaccompanied minors who do have enough credits but lack the ability to speak English well enough to participate at the grade-level they attained in another country, have faced significant delays in enrolling in school. These denials and delays are clearly pretextual because only children born in other countries who speak languages other than English face this barrier to enrollment even though there are children from all walks of life who are behind in terms of the number of credits they have attained or who have special educational needs that have no difficulty registering.

In Hilton's experience, notifications denying enrollment to unaccompanied children are informal and difficult to document. Most denials come verbally from a school's administrative staff. In several instances, Hilton has made attempts to follow up on a denial of enrollment with school administration. In most cases, the principal will justify the decision by pointing to the bases outlined above and seldom will the decision be overturned. In other cases, Hilton will be referred to the school district's legal team with similar results. Even with this follow-up, Hilton and the sponsors with whom she regularly deals find it difficult to secure written, language-appropriate explanations for enrollment decisions. In addition, schools rarely provide unaccompanied children with resources apprising them of their post-denial alternatives for furthering their education.

Following a denial, unaccompanied children rarely take action to complain about this practice beyond seeking Hilton's assistance. According to Hilton, this is largely due to the temporary, and sometimes transient, nature of the unaccompanied child's stay in North Carolina; overriding fear of potential immigration consequences; and unfamiliarity with the resources in place to help vindicate their rights. Further, Hilton notes that many unaccompanied children are treated as adults in their home countries so encounters with schools not well-

themselves men—feeling emasculated, and girls—who consider themselves women—feeling insulted. These cultural competencies also place pressures on unaccompanied children to support their families back home—forcing them to seek low-wage jobs after a denial of enrollment as opposed to continuing to fight to be in school.

North Carolina schools have not only denied unaccompanied children their right to an education outright, they have also placed numerous obstacles before those seeking to enroll. In Ellinwood's experience advocating on behalf of unaccompanied children, the systemic obstacles facing unaccompanied children—even if ultimately overcome—temporarily deny the child's right to an education and discourage the child's desire to pursue an education. As a result, when these children are ultimately enrolled in school, they start weeks or months behind their peers facing a life-changing educational deficit that can be difficult if not impossible to overcome. These delays constitute an artificial barrier to enrollment that damages the quality of education that unaccompanied children receive in North Carolina.

In Ellinwood's experience, unaccompanied children must complete far more complex and time-consuming paperwork than other students and frequently have more difficulty retrieving the documentation required to register than do their peers when attempting to register for school. Rather than enrolling these children while these various forms of documentation are being gathered, as mandated by the North Carolina Department of Public Instruction,[3] districts generally deny enrollment until all required documentation has been submitted, regardless of how difficult that documentation may be for the student to retrieve. In the case of proving the child's age, schools commonly

register. Each of these options can take months to accomplish, which leads to substantial delays, the loss of educational services for many unaccompanied children, and the discouragement from attempting to register for school altogether.

Custody proceedings are not an option for unaccompanied youth whose parents are temporarily unable to care for them, but who do not want to lose legal custody of their children. Under North Carolina law, students in this situation can register by filling out affidavits that establish they are living with a caregiver adult under one of the hardship exemptions to the domicile requirement. *See* N.C. Gen. Stat. § 115C-366(a3) (2011). Yet, in Ellinwood's experience, school districts usually incorrectly inform unaccompanied children and their sponsors in this situation that they must obtain a formal custody agreement in court to register. Even if they do become aware of the caregiver adult option, the process of filling out affidavits is time-consuming and difficult to accomplish without legal assistance. This functions as a bar to enrollment while this documentation is being completed and an absolute bar to enrollment for unaccompanied minors who are unable to complete these forms.

Both Hilton and Ellinwood see a number of practices that have the effect of chilling or discouraging unaccompanied children from attempting to enroll or following through with the enrollment process. Schools sometimes require Social Security numbers to enroll, and this practice is against federal guidance.[4] Sponsors also report little or no language access and a resulting inability to communicate with school staff including an inability to read and understand enrollment documents. Federal law stipulates that districts should make clear that provision of Social Security numbers must be optional and that the district must state the statutory basis for asking for Social Security numbers. Many unaccompanied children are denied access to education because of this state-imposed requirement. Most alarmingly, unaccompanied children and their sponsors often report a hostile environment where they are made to feel unwelcome and unwanted in their neighborhood schools.

The issues Hilton and Ellinwood highlight are not limited to the pages of the attached complaints or to the Complainants' individual experiences; indeed, they speak to the collective experience of at least one hundred unaccompanied children across North Carolina each year who have been denied the right to an education and the rich opportunities that flow from that right.

Widespread denials, delays, and discouragement of the right to an education by school officials in North Carolina warrant investigation beyond the individual denials of Complainants to ensure that no child present in the state has his or

education denied, delayed, or discouraged. If unaccompanied children continue to face the outright and constructive denial of the right to an education, these children are at risk of failing to succeed in all other areas of life.

Respectfully,

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Enc.

February 13, 2014

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U.S. MAIL, AND ELECTRONIC MAIL

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Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section - PHB
Washington, D.C. 20530

Email: education@usdoj.gov

Re: **CONSOLIDATED CIVIL RIGHTS COMPLAINT: C.V., on behalf of herself and all others similarly situated vs. Buncombe County Schools (Asheville, NC); and F.C., on behalf of himself and all others similarly situated vs. Union County Public Schools (Monroe, NC).**
(Asheville, North Carolina), and Union County Public Schools (Monroe, North Ca collectively, "the Districts."

[1] **Complainants allege that the Districts have discriminated against them on the basis of national origin and have engaged in discriminatory practices in violation of their obligations under Title IV of the Civil Rights Act of 1964 ("Title IV"), 42 U.S.C. § 2000c, Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. § 2000d, and its implementing regulations at 34 C.F.R. § 100.3(b)(2), and 28 C.F.R. § 42.104(b)(2). Complainants also allege that the Districts have directly violated their rights contrary to** *Plyler v. Doe*, 457 U.S. 202 (1982), which clearly held that a state may

- 282-2171; Buncombe County Schools,
ices Building, 175 Bingham Road, Asheville, NC 28806, Phone: (828) 255-5921;

not deny a child access to an otherwise available public education on the basis of the child's or parent's immigration status.[2]

Complainants[3] file these Complaints in their individual capacity and on behalf of all other similarly situated currently-classified, formerly-classified

guardian in the United States to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2). Once detained, unaccompanied children are placed under the care of the Office of Refugee Resettlement ("ORR"), in the Administration for Children and Families, a division of the United States Department of Health and Human Services. 6 U.S.C. § 279(a).

According to ORR, unaccompanied children typically leave their home countries to join family already in the United States; to escape violence, abuse, persecution or exploitation in their home country; to seek employment or educational opportunities in the United States to support themselves or their families; or because they were brought into the United States by human trafficking rings.[5] Until recently, the average number of unaccompanied children served by ORR each year was between 7,000 and 8,000.[6] In fiscal year 2012, that number nearly doubled when ORR served 13,625 children. The increase in unaccompanied children entering the United States more than doubled again in fiscal year 2013: ORR served 24,668 children who were apprehended by the U.S. Department of Homeland Security.

Salvador (26%), and Honduras (30%).[11] Unaccompanied children are an especially vulnerable population due to their youth, their separation from parents and relatives, and the hazardous journey they endure to reach the United States.[12] They are at risk for human trafficking, exploitation, and abuse.[13]

Once an unaccompanied child is referred to ORR from another federal agency, usually one within the United States Department of Homeland Security, he or she is placed "in the least restrictive setting that is in the best interest of the child . . . ." 8 U.S.C. § 1232(c)(2)(A). This is usually with a state-licensed care provider that provides classroom education, mental and medical health services, case management, socialization and recreation, and family reunification services.[14] Care providers will facilitate safe and timely release of the unaccompanied children to family members or sponsors who can care for them.[15] Sponsors are responsible for caring for the unaccompanied child, including ensuring that the child is enrolled in school.

too dangerous for her to walk to school in the evening, C.V. stopped going to school. She was sixteen years old at the time.

C.V. left home for the United States on September 16, 2012, at the age of sixteen (16). Once she reached the United States after crossing the Rio Grande River, on September 30, 2012, United States Customs and Border Protection officers apprehended and detained her while she was resting in the Texas desert. She was then transferred to the custody of ORR and placed in an unaccompanied minor refugee center in San Antonio, Texas, where she remained for six months. While in ORR custody, C.V. attended school and was allowed two ten-minute phone calls per week to speak with her mother in Honduras. Eventually, C.V.'s mother located E.H. in North Carolina. C.V. was released into E.H.'s custody on March 8, 2013, and now resides with E.H., E.H.'s husband, and their two children. As C.V.'s sponsor, E.H. was designated by ORR to be responsible for providing food, housing, healthcare, and ensuring that C.V. is enrolled in school. E.H. has lived in North Carolina for nine years.

On April 1, 2013, E.H. called Beatriz Riascos, School/Family Support Specialist in the Buncombe County Schools Title III/English as a Second Language (ESL) Program.[18]

designated by ORR to be responsible for meeting his basic needs including food, housing, healthcare, and ensuring that F.C. is enrolled in school.

Shortly after F.C. was released into her custody—likely the week of June 3, 2013[20]—S.C. tried to enroll F.C. in Forest Hills High School in Marshville, North

F.C. feels upset that it was so difficult and took so long to enroll in school. When F.C. came to the United States, he dreamed of attending school and continuing his studies; he was disappointed that it was so difficult for him to be accepted at his school.

law also prohibits discrimination in or exclusion from admission in public school on the basis of national origin.[25] Any policy or practice that requires students to be a certain age to enroll would violate state law. Indeed, there are neither state nor Respondent District policies requiring students to be able to graduate on time to be enrolled; nor are there policies requiring students enrolling for the first time in the district to have met a certain academic level for their age to be eligible for enrollment. Further, neither North Carolina nor Respondent Districts have a policy requiring students to demonstrate a certain level of English proficiency to be eligible for enrollment; such a requirement would contravene federal, state, and district policy against discrimination on the basis of national origin. On the contrary, pursuant to Title IV and Title VI, among other federal nondiscrimination laws, each Respondent District maintains a policy that expressly prohibits discrimination on the basis of race, color, national origin, sex, disability, or age and explicitly states that the District will not tolerate discrimination in any of its educational programs.[26]

Employees in each Respondent District violated state and federal law by denying Complainants' admission to school. Complainants are under twenty-one (21) years old and are domiciled in their Districts; they are therefore eligible for enrollment. Both schools in Buncombe County School District cited C.V.'s age when they denied her admission. Forest Hills High School cited F.C.'s age when they first denied his admission. Yet, denying enrollment on the basis of age when the student is under twenty-one (21) and otherwise meets the criteria for admission is against state law. Accordingly, public schools have no legal justification for declaring that a twenty-one year-old is "too old to enroll." Rather, a school relying on such an age-based claim is using it as a pretext for excluding Complainants based on their national origin.

Matt Ellinwood,[27] counsel for Complainants, has experience that demonstrates how age is used as a pretext for denying enrollment based on national origin or limited English proficiency. In Ellinwood's experience advocating on behalf of children in North Carolina, including unaccompanied children, only unaccompanied children who have

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school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education."); *see also Leandro v. State*, 488 S.E.2d 249, 255 (1997) (concluding that North Carolina Constitution "guarantee[s] every child of this state an opportunity to receive a sound basic education in our public schools").

[25] N.C. Gen. Stat. § 115C-367 (2011) ("No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin.").

[26] Buncombe Cnty. Schs., *Prohibition against Discrimination, Harassment and Bullying: Policy 1710/4021/7230*, Buncombe County Schs. 1, 5 (April 11, 2013), http://www.buncombe.k12.nc.us/cms/lib5/NC01000308/Centricity/Domain/7/1710_4021_7230%20Prohibition%20of%20Discrimination%20Harassment%20and%20Bullying.pdf; Union Cnty. Bd. of Educ., *Prohibition against Unlawful Discrimination, Harassment, Bullying (Students): Policy 4-7*, Union County Pub. Schs. 1 (revised Dec. 8, 2009), https://boe.ucps.k12.nc.us/policy_manual/policy_show.php?policy_id=112.

[27] Ellinwood is a policy analyst and attorney with the North Carolina Justice Center's Education and Law Project in Raleigh, North Carolina.

come to the school from another country are turned away for being "too old to enroll." Unaccompanied children who are the appropriate age to be eligible to enroll in school, like Complainants, have been denied enrollment in some cases and faced significant delays in others because they do not have enough credits to be placed in the grade that generally corresponds to their age. Similarly, unaccompanied minors who do have enough credits but lack the ability to speak English well enough to participate at the grade-level they attained in another country have faced significant delays in enrolling in school. These denials and delays are clearly pretextual because only children born in other countries who speak languages other than English face this barrier to enrollment even though there are children from all walks of life who are behind in terms of the number of credits they have attained or who have special educational needs that have no difficulty registering. Denying enrollment to C.V. and F.C. based on their national origin in this manner violates the nondiscrimination provisions of Title IV and Title VI.

Employees of Union County Public School District also violated state and federal law by conditioning F.C.'s enrollment in school on completion of an English proficiency exam. The protections provided by Title VI and its implementing regulations have been interpreted to extend to students with limited English proficiency.[28] School districts are thus required to provide national origin minority LEP students with educational benefits and opportunities equal to those provided to other students.[29] This includes the right to enroll in school. Conditioning F.C.'s enrollment on taking an English profici

attending school since April 2013 and has fallen even further behind her classmates. Because of Union County Public Schools' denial and delay, F.C. was prevented from enrolling in school on his first attempt in the first week of June. He was prevented from submitting enrollment paperwork until after he completed an English proficiency examination at the end of July. Although he started school in August 2013, his enrollment was ultimately delayed nearly three months, and F.C. missed out on summer school opportunities offered by the school. Had F.C. not been persistent about his right to enroll in school, he would not have been enrolled at all.

This is precisely the harm the *Plyler* Court sought to prevent. The Court b ( )Tj ratom

Respectfully,

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