

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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PEOPLE OF THE STATE OF NEW YORK,
by ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiff,

Case No.

--against--

COMPLAINT

UTICA CITY SCHOOL DISTRICT, UTICA CITY
SCHOOL DISTRICT BOARD OF EDUCATION, &
BRUCE KARAM, Superintendent of Utica City School
District, in his official capacity,

Defendants.

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PRELIMINARY STATEMENT

1. For years, the Utica City School District (“District”) has deliberately deprived limited English proficient (“LEP”) immigrants aged 17-20 of the equal educational opportunity to which they are entitled by law. The District has a policy and practice of excluding these immigrants from enrolling and attending the District’s only high school, Thomas R. Proctor High School (“Proctor High School” or “Proctor”), and diverting them to unequal educational services that do not, and cannot, yield a high school diploma. This action is brought on behalf of the People of the State of New York. The District’s policy and practice impacts substantial immigrant populations in Utica, and the District’s exclusion of these students from the benefits of secondary public education causes ongoing harm to the State of New York.

2. According to the 2010 Census, the City of Utica has approximately 60,000 residents. Eighteen percent of Utica’s total population was born outside of the United States, up

from just twelve percent in 2000, and over a quarter speaks a language other than English at home. In fact, the area served by the District has one of the largest proportions of limited English proficient households in New York, with over one in ten households having no member over the age of 14 who speaks English “very well.” Utica is home to the Mohawk Valley Resource Center for Refugees (“Refugee Center”) which, over the past thirty-five years, has assisted in resettling more than 15,000 refugees in Utica. These refugees came to the United States from around the world – Vietnam, Russia, Bosnia, Ukraine, Somalia, Myanmar – and many of them fled from ethnic persecution in their countries of origin. Many spent extended periods of time in refugee camps, some spending formative childhood years living in, and being educated in, those camps. Many have limited English proficiency when they arrive in the United States.

3. The District has adopted and enforced a policy to keep immigrant students out of Proctor High School. For years this policy was unwritten, until last year when the District reduced the following policy to written form: if District officials perceive an immigrant student to be LEP, and the student is over the age of 16, (s)he may not enroll at Proctor. No matter what the stated wishes are of LEP immigrant students aged 17-20 (“Affected Immigrant Students”), or how much they want to attend Utica’s only public high school, the District instead diverts them to unequal educational programs. At the same time, the District permits non-immigrant and English proficient students who are aged 17-20 to enroll at Proctor.

4. These unequal educational programs have changed over the years, but none of them allow Affected Immigrant Students to obtain, or even work towards, a high school diploma. The programs are chiefly English as a Second Language (“ESL”) instruction with little more. All of them serve to segregate Affected Immigrant Students from the general student

population in Utica. One senior District official even expressed a desire that Affected Immigrant Students be bused to these programs in a manner that did not bring them into contact with the general student population. And even more egregiously, after enforcing its longstanding policy of diverting immigrant students from the high school into unequal District educational programs, for the past two school years the District has ceased to provide even this programming to Affected Immigrant Students and has outsourced its duty to educate them to third parties, like the Refugee Center. Upon information and belief, the District felt free to take these steps because it had an unwritten policy of neither testing Affected Immigrant Students for English language proficiency, as required by law, nor recording their attempts to enroll in District student databases—thereby rendering these students “strangers” to the District.

5. The District’s policy and enforcement practices violate state and federal law. Under the New York Constitution and Education Law, every student is entitled to a free public education until she turns 21, regardless of national origin or English proficiency. The District has violated these legal requirements by prohibiting Affected Immigrant Students – those aged 17-20 – from attending Proctor High School. Furthermore, the District has violated numerous federal statutes prohibiting discrimination against students on the basis of national origin by (i) prohibiting Affected Immigrant Students from attending Proctor, while allowing non-immigrant students of the same age to attend the high school, and (ii) segregating Affected Immigrant Students from the general student population at Proctor. In addition, federal law requires the District to take appropriate action to overcome language barriers that impede the equal participation of students in District programs. The District policy and practice of prohibiting Affected Immigrant Students from attending Proctor is the antithesis of taking required action to overcome such barriers and allowing for those students’ equal participation in

District programming.

6. Indeed, the District’s policy ensures that Affected Immigrant Students can never receive a high school diploma, sending them down a path to nowhere. And the District’s enforcement of its policy has been so wide-sweeping that numerous students *who had already successfully completed years of high school in other states* by the time they moved to Utica, were perceived by District officials to be LEP immigrants and, on that basis, were then refused entry to Proctor High School and diverted into non-degree bearing programs. In this manner, the District’s enforcement of its policy has harmed not only Affected Immigrant Students, but also students that District officials *perceive to be* Affected Immigrant Students, whether or not those students are in fact recently arrived immigrants or are limited English proficient.

7. As the U.S. Supreme Court observed decades ago in *Plyler v. Doe*, “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” because “education prepares individuals to be self-reliant and self-sufficient participants in society.” The Attorney General brings this action to vindicate this principle and the legal rights of immigrant students who want, and are entitled, to go to high school in New York State.

JURISDICTION AND VENUE

8. This action arises under the Constitution and laws of the United States, including 20 U.S.C. § 1703, 42 U.S.C. § 2000d *et seq.*, and 42 U.S.C. § 1983. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). This Court may exercise supplemental jurisdiction over the claims based on New York law pursuant to 28 U.S.C. § 1367.

9. This Court has jurisdiction to issue the declaratory relief requested pursuant to

the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202. This Court may also grant injunctive relief pursuant to Federal Rule of Civil Procedure 65.

10. Venue is proper in the Northern District of New York pursuant to 28 U.S.C. § 1391(b), because all of the events set forth in this complaint occurred in the Northern District of New York.

PARTIES

11. Plaintiff is the People of the State of New York, by its attorney, Eric T. Schneiderman, Attorney General of the State of New York. Where, as here, the interests and well-being of the People of the State of New York as a whole are implicated, the Attorney General possesses *parens patriae* authority to commence legal actions in federal court for violations of federal laws or state laws and regulations. The Attorney General of the State of New York brings this action pursuant to this authority because the District's discriminatory policy and practice of excluding Affected Immigrant Students from the District's only public high school has prevented those students from accessing essential educational services to which they are legally entitled.

12. The Attorney General employs his *parens patriae* authority to protect New York residents who are denied their right to enroll in public high school due to discrimination based on their national origin. The Attorney General has a quasi-sovereign interest in the health and well-being of the People of the State of New York. A primary component of that well-being is the ability of youth to access a public education, including a high school diploma, and the social and economic benefits that flow therefrom. As the U.S. Supreme Court observed in *Plyler*, education is fundamental to our social fabric because it “provides the basic tools by which individuals might lead economically productive lives to the benefit of us all,” and to deny any

group of children access to education poses an affront to constitutional principles of equality and imposes significant social costs upon the state and nation. With this interest in mind, the Attorney General launched a statewide initiative in the fall of 2014 to ensure that school districts across New York are fulfilling their obligations concerning the enrollment of immigrant students and unaccompanied or undocumented minors.

13. The Attorney General further invokes his *parens patriae* authority because the District's policy and practice of denying equal educational opportunity to Affected Immigrant Students harms a large number of New York residents. The City of Utica and Oneida County have a large population of refugee immigrant residents with limited English proficiency. Absent action by the Attorney General, many of these individuals – who comprise a significant number of residents and citizens of the State of New York – will be unable to exercise their statutorily protected rights and will, collectively, suffer irreparable harm. Further, a private lawsuit by an aggrieved individual or group of individuals would likely result in relief tailored to that particular individual's or group's educational enrollment status. Accordingly, comprehensive and complete relief cannot be adequately obtained independently by a private lawsuit.¹

¹ The Attorney General is aware of a private class action suit filed in the Northern District of New York by the New York Civil Liberties Union and Legal Services of Central New York, seeking relief on behalf of six named plaintiffs and other individuals similarly situated. *See Tuyizere, et al. v. Utica City School District, et al.* (C.A. No. 15-cv-488 (TJM-TWD)). In light of the powerful public interest in ensuring that New York residents are provided equal educational opportunity, it is incumbent upon the Attorney General to bring the instant action irrespective of the pending private suit. The instant action arises out of the Attorney General's ongoing statewide compliance initiative, another goal of which is to establish consistent practices by districts across New York. Here the Attorney General seeks relief on behalf of a larger group than the putative class in the pending private suit, *i.e.*, "all LEP immigrants aged 17-20 who are eligible to attend public high school in Utica." The Attorney General is aware of students who are not immigrants who recently arrived to America, or who had English proficiency sufficient to complete years of high school prior to moving to Utica, but whom the District excluded from Proctor High School because they were simply perceived to be LEP immigrants by District officials. The Attorney General seeks relief on behalf of such students as well. Furthermore, the Attorney General understands that the court to which the private suit was assigned has yet to address the merits of class certification, or whether relief in that action will encompass more than the named plaintiffs and their specific grievances.

14. Defendant Utica City School District is the public school district in and for the City of Utica, New York. The District is a recipient of federal financial assistance. The District is a State actor and, at all relevant times referenced in this complaint, acted under color of State law as defined by 42 U.S.C. § 1983.

15. Defendant Utica City School District Board of Education (the “Board”) has general control, management and responsibility of the District and the public schools within that district, including Proctor High School. The Board is a recipient of federal financial assistance. The Board or its designee evaluates enrollment applications for students entering into grades K-12 and decides which students can, and cannot, attend public schools within the District. The Board is a State actor and, at all relevant times referenced in this complaint, acted under color of State law within the meaning of 42 U.S.C. § 1983.

16. Defendant Bruce J. Karam is the Superintendent of the District, responsible for enforcing all provisions of law and rules and regulations concerning the management of the schools, and other educational, extracurricular, social, and recreational activities under the direction of the Board. Superintendent Karam is a State actor and, at all relevant times referenced in this complaint, acted under color of State law within the meaning of 42 U.S.C. § 1983. Superintendent Karam is sued in his official capacity.

FACTS

17. Federal and state law make clear what the District must provide to all students, regardless of national origin or English language proficiency, until they are 21 years old. For years, the District has adopted and enforced an enrollment policy in violation of its legal duties to Affected Immigrant Students. The District’s policy prohibited the enrollment of Affected Immigrant Students in Proctor High School and required the diversion of these students to

unequal and segregated educational programs. The District enforced its policy through all levels of its workforce, up to and including senior District officials, and over the years this enforcement has had a significant impact upon immigrant students and immigrant communities in Utica.²

I. Statutory and Regulatory Framework

18. Under federal and state law, school districts must provide students with equal access to all school programs and services offered by districts commensurate with their age and grade level, including access to programs required for graduation, regardless of those students' English language proficiency or national origin.

Equal Educational Opportunity for Students Under 21 Years of Age

19. The New York State Constitution, Article 11, § 1, entitles all students the opportunity to receive a free public education. Under New York Education Law § 3202(1), each person over five and under 21 years of age, who has not received a high school diploma, is entitled to attend a public school within their district. New York Education Law § 3201(1) provides that no person shall be refused admission into or be excluded from any public school on account of national origin. Although the compulsory age of education ends at age 16, a student may not be denied the opportunity to attend a public school if (s)he is older than 16 and under 21 years old, including even a student who has already obtained a high school equivalency/general educational development (“GED”) diploma.

20. Four decades ago, in *Lau v. Nichols*, the United States Supreme Court held that, under Title VI of the Civil Rights Act of 1964, students cannot be denied equal access to a

² Limited English proficient, or LEP, students are often referred to in the educational setting as English language learners, or “ELLs”. Throughout this complaint “LEP students” and “ELLs” both refer to students with limited English proficiency.

public education on the basis of national origin, which includes discrimination based on limited English proficiency. The Court held that school districts must take affirmative steps to ensure that LEP students can meaningfully participate in their educational programs and services.

21. In the same year, Congress enacted the Equal Educational Opportunities Act (“EEOA”), which, *inter alia*, prohibits school districts from discriminating against students based on their national origin; requires districts to take appropriate action to overcome students’ language barriers; and has been interpreted to require schools to provide instruction in core curriculum coursework as well as English. The EEOA also explicitly prohibits the deliberate segregation of students by school districts based on their national origin.

22. Later, in *Plyler v. Doe*, the United States Supreme Court held that the Equal Protection Clause of the U.S. Constitution’s Fourteenth Amendment prohibits school districts from denying students a free public education on the basis of their or their parents’ immigration status. The decision has been interpreted to prohibit actions by school districts that would serve to chill or inhibit the enrollment of students on those bases.

23. New York Education Law §3204 and Section 154-1.3 of the Regulations of the Commissioner of the New York State Education Department (“SED”) (the “Commissioner’s Regulations”) set forth standards for the educational services that must be provided to LEP students in New York State. Students suspected of being LEP must be assessed using state proficiency exams to confirm (i) that they are actually LEP, and (ii) their level of English proficiency. LEP students are entitled to English instruction and grade- and age-level appropriate instruction in core curriculum subjects, such as math, science, and social sciences. LEP students must receive equal access to all school programs, including extracurricular activities, and services offered by the school district, and they must be given the opportunity to

achieve the same educational goals and meet the same standards as the general student population.

24. Pursuant to the Education Law and Commissioner's Regulation 154-1.3, school districts must provide a bilingual program, with grade- and age-level appropriate instruction, whenever there are 20 or more LEPs who attend school in the same building, at the same grade-level, and have the same native language. If a school does not reach the threshold mandating a bilingual education program for a particular building, LEP students at that school are entitled to grade- and age-level appropriate instruction in required subjects in an ESL program. Students placed in a bilingual or ESL program must undergo English language assessments annually to determine whether they continue to be LEP.

Requirements for Student Enrollment

25. When enrolling students, school districts in New York State must comply with Commissioner's Regulation 100.2(y). Among other things, the regulation expressly prohibits school districts, at the time of or as a condition of enrollment, from inquiring about the citizenship or immigration status of students or their parents or guardians, as well as requesting information which would tend to reveal immigration status, such as Social Security numbers, visa documentation, or I-94 forms. In addition, the regulations require districts to enroll a student and allow her to begin attendance on the next school day, or as soon as practicable after a request to enroll. School districts must make a determination as to whether a student is entitled to enroll in the district within three business days after the initial application to enroll.

Requirements for Newcomer and Alternative Programs

26. Alternative programs for LEP immigrant students – including the one created by the Defendants and others to which the Defendants have diverted students – must provide equal

access to education within the school district. The Office for Civil Rights (“OCR”) at the United States Department of Education has issued several documents articulating its policies on the provision of educational services to LEP students.

27. In guidance issued in December 1990 and January 2015, OCR provided examples of “newcomer” programs or alternative educational programs that would likely be in compliance with Title VI and the EEOA. The following are some essential program features set forth by the OCR. First, a newcomer program is voluntary, *i.e.*, a school district must inform parents that they may enroll their children in either their home schools or the newcomer program. Second, attendance at the newcomer program is for a limited duration, generally no longer than one year. After completion, students should transition to an integrated educational program. Third, the facilities, all curricular and extracurricular activities, including the core curriculum, graduation, specialized and advanced courses and programs, sports, and clubs at the newcomer program are comparable to those at the district's other schools. Fourth, newcomer LEP students are encouraged and allowed to participate in integrated school activities, such as recess, lunch, physical education, art, and music. Fifth, the district regularly evaluates the English proficiency of students in the newcomer program in order to allow appropriate transitions out of the newcomer program throughout the academic year.

28. In general terms, newcomer programs must be a bridge to general education classrooms, and they must function as a pipeline to integrated educational services provided by the school district, rather than as an educational dead-end.

II. The District’s Refusal to Enroll Immigrant Students in Proctor High School

29. For several years, and continuing into the current year, the District has maintained a policy and practice of refusing to enroll Affected Immigrant Students in Proctor

High School, while simultaneously allowing non-immigrant and English proficient students of the same age (17-20) to enroll in and attend Proctor. Instead of allowing Affected Immigrant Students to attend high school, the District has mandatorily diverted these students into alternative educational programs unequal to the high school education to which they are legally entitled. Until 2014, this policy was unwritten but enforced by the highest levels of District administration, including the District's Superintendent. In 2014, the District reduced its unwritten policy to written procedures that specify a different path for Affected Immigrant Students, as compared to the enrollment procedures used by the District for its general student population.

Origin of the District's Enrollment Policy and the Newcomer Program

30. The District's discriminatory enrollment policy dates back to 2007, when senior District personnel, including Superintendent Karam, approved a program to keep Affected Immigrant Students out of Proctor High School. In the spring of that year, Mr. Karam and the District's Director of ESL developed a mandatory ESL program for immigrant students aged 17-20, whereby the District would automatically send any such student seeking enrollment to a "Newcomer Program" rather than to Proctor. The Affected Immigrant Students would be sent to the Newcomer Program regardless of any wish to attend high school like their non-immigrant and English proficient peers of the same age.

31. Pursuant to the new program, the District instituted a policy of refraining from entering information about Affected Immigrant Students' attempts to enroll in the District's student databases. Similarly, because the District kept no records of such enrollment attempts, the District saw no need to – and did not – conduct English language proficiency testing upon Affected Immigrant Students, even though such testing was required by law.

32. Upon information and belief, by never testing the language proficiency of Affected Immigrant Students, or recording their attempts to enroll, the District could claim that these individuals were unknown to it—effectively strangers to the District who never sought to enroll and, thus, toward whom the District had no legal obligations beyond whatever piecemeal services the District chose to offer them.

33. The Newcomer Program began operating in the District in 2007. From this point forward, and continuing into the current year, Superintendent Karam instructed District employees to direct Affected Immigrant Students to the Newcomer Program rather than Proctor, and to avoid recording their attempts to enroll in District student databases.

34. During the same period the District has allowed non-immigrant and English proficient students, aged 17-20, to enroll in and attend Proctor High School.

The District's Enforcement of Its Discriminatory Enrollment Policy

35. The District systematically enforced its discriminatory enrollment policy to ensure that, no matter what channel Affected Immigrant Students used to try enrolling at Proctor, they would not be allowed to go to school there and would instead be diverted to alternative educational services. As set forth below, the policy was enforced by various senior District officials and personnel, including the District's Superintendent, Director of ESL, Administrator for Pupil Services and ELLs, the Director of Curriculum Instruction K-12, principals at Proctor High School, as well as District "academic coaches."

Enforcement Practices by District Administrative Officials

36. When Affected Immigrant Students come directly to the District's administrative offices seeking to enroll, District officials have refused to enroll them at Proctor High School and instead have immediately enrolled them in the Newcomer Program. From the

outset of the Newcomer Program and continuing until 2011, the District's Director of ESL was responsible for the enrollment of all ELLs, including Affected Immigrant Students. During that period, the Director enforced the District's policy and refused to enroll Affected Immigrant Students at Proctor or to record their enrollment attempts in District student databases.

37. In 2011, when the Director retired, she provided instructions about the position to her successor, who had the new title of Administrator for Pupil Services and ELLs. The Director instructed her successor to ask the age of any LEP immigrant student who came to the District's administrative office seeking to enroll, often by requiring the student to produce an I-94 immigration document. If the student was over the age of 16, the Director instructed her successor to enroll the student in the Newcomer Program, regardless of that student's wish to attend Proctor. The Director also instructed her successor not to record such enrollment attempts in District student databases, in accordance with the District's policy.

38. As a result, until the District eliminated the position in 2014, both the Director of ESL and the Administrator for Pupil Services and ELLs – *i.e.*, the District officials with direct and immediate responsibility for the enrollment of ELLs – refused to enroll Affected Immigrant Students at Proctor High School and did not record those students' enrollment attempts in District student databases. The Director and Administrator also instructed their staff to follow the District's policy with respect to Affected Immigrant Students.

39. For example, in 2013 an 18 year-old Somali Bantu refugee, who was already attending the District's Newcomer Program, came to the District's administrative offices with her mother and a community advocate. They met repeatedly with the Administrator and expressed the student's desire to attend Proctor. The Administrator then communicated the student's desire to enroll at Proctor to numerous District officials, including the Assistant

Principal of Proctor and the Director of Curriculum Instruction K-12. However, at the Director of Curriculum's instruction, the Administrator told the student that because she was 18 she could not enroll at Proctor.

40. District officials at the District's administrative offices have not refused to enroll non-immigrant or English proficient students aged 17-20 in Proctor, on the ground that they are too old to attend high school.

Enforcement Practices by Officials at Proctor High School

41. The District also enforces its discriminatory enrollment policy through officials at Proctor High School. Similar to the actions of officials at its administrative offices, District officials also prevent Affected Immigrant Students from enrolling at Proctor when those students go directly to the high school itself and seek to enroll there.

42. For example, in the summer of 2013 twin sisters went to Proctor with several family members, seeking to enroll for the coming school year. The sisters, originally refugees from Burma, had moved to Utica a few weeks before their attempt to enroll. Upon arriving at the school, they inquired of a District employee how to enroll at Proctor. The employee asked them their ages. When the sisters told the employee they were 19, the employee responded that they could not enroll at Proctor because they were "too old." The District employee also told the twins that the law had recently changed and prevented them from enrolling at Proctor because they would not have sufficient time to pass the required Regents exams and graduate before they turned 21. A few months later, the sisters began attending the Newcomer Program.

43. Despite the actions of District officials described above, an Affected Immigrant Student would, on occasion, slip through the cracks and manage to enroll at Proctor. On such occasions, District officials would take additional steps to inquire about an Affected Immigrant

Student's right to attend Proctor.

44. For example, in 2013 the Principal of Proctor called the Administrator for Pupil Services and ELLs to inquire about a particular immigrant student. The principal noted that the student – who supposedly should have been enrolled as a newcomer – was in fact regularly enrolled, and asked whether the District's Director of Curriculum had approved this particular enrollment.

45. The District also established an additional layer of review for Affected Immigrant Students seeking to enroll at Proctor. On several occasions, the Administrator of Pupil Services and ELLs advocated for Affected Immigrant Students who wanted to enroll at Proctor, despite knowing the District's policy about those students. In a September 2013 memorandum to the Administrator, a senior District official added an additional layer of enforcement for the District's discriminatory policy and wrote that, in addition to the Administrator, the Assistant Principal of Proctor would be assigned as a designee to oversee any and all ELL student placements to Proctor High School.

46. District officials did not make such additional inquiries concerning non-immigrant and English proficient students of the same age (17-20) who were attending Proctor, nor did they subject such students to additional bureaucratic review concerning their right to attend Proctor High School.

Enforcement Practices by District Academic Coaches

47. The District further enforced its discriminatory enrollment policy through employees known as "academic coaches." No later than 2007, the District created the position of academic coach and hired five bilingual individuals as coaches. They were hired to provide in- and out-of-classroom support to families on school-related issues, including enrollment.

Until the Administrator of Pupil Services and ELLs left the District in 2014, she had sole responsibility for training and supervising the academic coaches.

48. The Administrator instructed the academic coaches on the District's enrollment policy for Affected Immigrant Students. Specifically, the Administrator trained the coaches that Affected Immigrant Students should be sent to the Newcomer Program rather than to Proctor High School. The Administrator further instructed the coaches that Affected Immigrant Students should neither be tested for English language proficiency, nor should their attempts to enroll be recorded in District student databases.

49. The District's academic coaches initially resisted enforcing the District's enrollment policy and communicated to the Administrator of Pupil Services and ELLs that they were uncomfortable doing so. In response, the Administrator told the coaches that this was the District's policy and that they were required to enforce it as District employees.

50. From the time they were hired until January 2013, the academic coaches were located in the District's main administrative building. During this period, if a student with limited English proficiency came to the building seeking to enroll, the academic coach was trained to ask the applicant for his or her immigration documents – typically an I-94 form – and if, on this basis, the coach determined that the applicant was over 16, the coach would send the applicant to the Newcomer Program. The academic coach was also trained not to send the student for English language proficiency testing or to take steps to record the student's attempt to enroll.

51. From the time they were hired until January 2013, District academic coaches directed numerous Affected Immigrant Students to attend the Newcomer Program instead of Proctor High School, despite requests by numerous Affected Immigrant Students to attend

Proctor. Similarly, the academic coaches did not take steps to record such enrollment attempts in District student databases.

52. During this same period, academic coaches did not ask non-immigrant or English proficient students of the same age for immigration-related documents, like I-94 forms, nor did the coaches divert such students away from Proctor on the ground that they were too old to attend the high school.

53. In January 2013, the District relocated the academic coaches off of District property, from its administrative building to the Refugee Center, but the District's policy remained unchanged. When a student with limited English proficiency came to the administrative office seeking to enroll, District officials would refer the student to the Refugee Center to meet with an academic coach. When the student reached the Refugee Center, the coach was under the same District instructions: refer Affected Immigrant Students to the Newcomer Program.

54. From January 2013 and continuing into the current year, District academic coaches have directed numerous Affected Immigrant Students to attend the Newcomer Program instead of Proctor High School, despite requests by numerous Affected Immigrant Students to attend Proctor. Similarly, the academic coaches have not taken steps to record such enrollment attempts in District student databases.

55. During this same period academic coaches did not ask non-immigrant or English proficient students of the same age for immigration-related documents, like I-94 forms, nor did the coaches divert such students away from Proctor on the ground that they were too old to attend the high school.

Codification of the District's Enrollment Policy and Practices

56. In fall 2014, the Oneida-Herkimer-Madison Board of Cooperative Educational Services (“OHM BOCES”) began offering a high school equivalency program to Affected Immigrant Students in the District. The program, named “APPLE” (Alignment of Pathways and Programs for Learners of English), was designed in consultation with District officials during 2014.

57. Planning documents for the APPLE program reflect a working assumption that Affected Immigrant Students would not or could not graduate from Proctor and, accordingly, should at most be in a high school equivalency program.

58. Planning documents for the APPLE program also reveal a focus by District officials on maintaining the segregation of immigrant students from the general student population at Proctor. For example, a meeting memorandum from the fall of 2014 addressed the District’s busing of Affected Immigrant Students to the APPLE program and states that the District’s Director of Curriculum Instruction K-12 preferred not to have APPLE students on the same bus with other District students.

59. Once the APPLE program became functional in the fall of 2014, the District finally codified in written form its discriminatory policy and practices on enrollment. The District created a unique set of written enrollment procedures for immigrant students that were different from those applied to the general student population in the District.

60. The November 2014 document is entitled “Procedures for Referring New Arrivals Who Are Under Age 21, to ESL Programming.” They state that the “following referrals will be made for new arrivals in Utica who are under 21 years old.” The procedures classify immigrants by age – “Age 19 and 20,” “Age 18,” and “Age 17” – but none of the

referral locations are to Proctor or anywhere mention enrollment at Proctor. Rather, immigrants who are 19, 20, or will turn 19 before the end of the current school year are referred to a high school equivalency program; and immigrants who are 17 or 18 (and will remain 18 through the current school year) are referred to the District Director of Curriculum Instruction K-12 who, as noted above, has repeatedly prevented the enrollment of Affected Immigrant Students into Proctor.

61. The District's November 2014 written procedures were not applied to non-immigrant or English proficient students aged 17-20 who sought to enroll in Proctor High School.

III. The District's Deliberate Provision of Segregated and Unequal Educational Services to Immigrant Students

62. After adopting and enforcing an enrollment policy that kept Affected Immigrant Students from attending Proctor High School, the District exacerbated the impact of its policy by segregating those students and providing them piecemeal educational services unequal to the educational programming offered to similarly situated students, *i.e.*, non-immigrant and English proficient students aged 17-20.

63. Upon information and belief, because the District's enrollment policy avoided recording enrollment attempts by Affected Immigrant Students, thus rendering them strangers to the District, the District felt entitled to offer those students segregated educational options, unequal to their non-immigrant and English proficient peers. Ultimately the District went so far as to terminate services for Affected Immigrant Students altogether, in the case of the Newcomer Program, and to outsource its duty to educate those students to third parties.

Nevertheless, the third party services offered to Affected Immigrant Students remain separate and unequal to the services the District provides to their non-immigrant and English proficient peers.

The District's Provision of Segregated Education Services

64. For years, the District has intentionally separated Affected Immigrant Students from the non-immigrant general student population at Proctor High School and in the District's high school equivalency program ("GED program").

65. Since at least 2007, the District has not allowed Affected Immigrant Students to attend classes with non-immigrant students. While the District occasionally granted Affected Immigrant Students use of District gymnasiums, it has not permitted them to attend gym, art, or music classes with non-immigrant students. Moreover, the District did not allow Affected Immigrant Students to participate in the District's GED program alongside non-immigrant students.

66. Similarly, during the same period the District has not offered Affected Immigrant Students the opportunity to participate in extracurricular activities with non-immigrant students.

67. The District has also physically separated Affected Immigrant Students from non-immigrant students. In 2009, the only program available for Affected Immigrant Students, the Newcomer Program, was moved to a location off of District property, separate and apart from programs provided to non-immigrant students. From that time until the present, Affected Immigrant Students have been offered educational services offsite.

68. The District continues to offer Affected Immigrant Students educational services offsite. Currently, the District diverts Affected Immigrant Students into one of three educational

programs run by third parties: the Newcomer Program run by the Refugee Center, and the APPLE Program and another high school equivalency program run by OHM BOCES. All three programs are located in buildings separate from the District's general non-immigrant student population at Proctor High School. The Newcomer Program is located at the Refugee Center at 309 Genesee Street in Utica, New York. Similarly, Affected Immigrant Students in the APPLE Program attend classes at an OHM BOCES facility in New Hartford, New York. Finally, Affected Immigrant Students in the OHM BOCES high school equivalency program attend classes at the Veteran's Outreach Center at 725 Washington Street in Utica, New York.

69. The District's segregation of Affected Immigrant Students has even extended to the buses used to transport those students to their alternative educational programs. As noted above, in a fall 2014 planning document for the APPLE program, a senior District official stated her preference for busing Affected Immigrant Students, stating that she preferred not to have APPLE students on the same bus with other District students.

70. Non-immigrant students aged 17-20 have the option to attend the District's GED program or Proctor High School.

The District's Provision of Unequal Educational Services

71. For years, the District provided Affected Immigrant Students services that were not only separate from their non-immigrant and English proficient peers, but also unequal to those services offered to their peers.

72. Between 2007 and 2013, the District operated the Newcomer Program, an ESL service for Affected Immigrant Students. The District automatically enrolled Affected Immigrant Students in the Newcomer Program, and did not afford them the opportunity to attend Proctor or the District's GED program.

73. However, the District offered non-immigrant and English proficient students, aged 17-20, the option of enrolling at either Proctor or in the District's GED program.

74. The District did not provide curriculum to Affected Immigrant Students in the Newcomer Program comparable to that provided to students attending Proctor or the District's GED program. For example, Affected Immigrant Students cannot obtain a high school diploma through the Newcomer Program.

75. However, the District offered non-immigrant and English proficient students, aged 17-20, the option of pursuing a high school diploma at Proctor.

76. The District did not design the Newcomer Program to offer Affected Immigrant Students instruction in content areas (*e.g.*, math, science, social studies)—instruction that students at Proctor routinely receive. Moreover, when teachers in the Newcomer Program began providing some content area instruction in ESL lessons, the District did not allow Affected Immigrant Students in the program to earn high school course credit for those lessons.

77. However, non-immigrant and English proficient students aged 17-20 whom the District allows to attend Proctor can earn high school credit for such classes.

78. The Newcomer Program did not provide Affected Immigrant Students with any coursework that would prepare them to take the GED exam.

79. However, the District offers non-immigrant and English proficient students, aged 17-20, the option of attending its GED program.

80. Finally, the District did not design the Newcomer Program to be a temporary or limited duration service, nor did the District design the program to transition a student into an integrated educational program. In practice, students in the Newcomer Program could take over two years to complete the ESL-only service. The District did not evaluate the Affected

Immigrant Students in the Newcomer Program to determine whether transitioning to Proctor or its GED program was appropriate. Moreover, upon a student's completion of the program, the District would not permit that student to enroll in Proctor or in the District's GED program.

81. As a result, while the District operated the Newcomer Program, it ensured that Affected Immigrant Students received unequal education services as compared to their non-immigrant and English proficient peers.

District Diversion of Affected Immigrant Students Into Unequal Educational Services

82. The District administered the Newcomer Program until 2013. At that time, the District decided that it would no longer provide *any* services to Affected Immigrant Students. Instead, the District diverted these students into programs run by third parties, thereby outsourcing its duty to provide educational services to these students.

83. The District diverted Affected Immigrant Students into one of three available programs, the Refugee Center's Newcomer Program, or one of two high school equivalency programs run by OHM BOCES, including the APPLE program. Nevertheless, the educational opportunities offered to Affected Immigrant Students at these programs remained unequal to the opportunities offered to similarly situated students, *i.e.*, non-immigrant and English proficient students aged 17-20, in the District.

84. From 2013 and continuing to the present, numerous Affected Immigrant Students who were enrolled in these programs expressed the desire to attend Proctor. The District would not allow these immigrant students to attend Proctor without the repeated advocacy of private attorneys.

85. However, from 2013 and continuing to the present, non-immigrant and English proficient students aged 17-20 have had the option of enrolling in Proctor or in the District's GED program.

86. Moreover, none of the three "outsourced" options made available by the District after 2013 allow Affected Immigrant Students to obtain a high school diploma.

87. However, non-immigrant and English proficient students, aged 17-20, continue to have the option of enrolling at Proctor and pursuing a high school diploma.

88. Furthermore, none of the three "outsourced" options made available by the District after 2013 offers a curriculum equal to that provided to students at Proctor or in the District's GED program. For instance, the Newcomer Program curriculum remains substantially similar to the curriculum described above, when the District was operating it. The APPLE program includes instruction in writing, reading, listening to and speaking English, but does not include instruction in math, science, or social studies.

89. However, students attending Proctor have the option to participate in courses in math, science, and social studies. Moreover, completion of these courses provides students with credit towards their Regents requirements for graduation. Affected Immigrant Students in the Newcomer or the OHM BOCES high school equivalency programs receive no such benefits from the service.

90. The services available to Affected Immigrant Students after 2013 were not temporary or limited duration services. The new high school equivalency programs run by OHM BOCES were not designed to transition students back into integrated programs provided by the District. Moreover, the District did not evaluate the students enrolled in the Newcomer Program or in the OHM BOCES programs to determine whether a transition to Proctor or the

District's GED program was appropriate.

91. As a result, by diverting Affected Immigrant Students into programs that do not provide the same level of services available to the District's non-immigrant and English proficient student population, the District continues to ensure that Affected Immigrant Students receive unequal educational services.

IV. The Discriminatory Impact of the District's Policy on Immigrants in Utica

92. The District's policy has had a profound impact upon immigrant students in Utica. For many years the District has continuously refused to enroll Affected Immigrant Students into Proctor High School, and has instead diverted these students to segregated, unequal, and non-degree bearing educational services. Throughout these years the District's policy, and its enforcement by District officials, have deprived many immigrant students of various national origins from the free public education to which they are legally entitled.

93. The District's enforcement of its policy is so wide-sweeping that it impacts more than just immigrants newly arrived to Utica from abroad. Indeed, immigrant students who have already attended high school in the United States, and then move to Utica, also risk being denied enrollment at Proctor if District officials perceive these students to be LEP. In several instances from 2007 to the present, the District has excluded from Proctor immigrant students who were perceived to be LEP, despite the fact that those students had previously been enrolled in, and attended, high schools in the U.S. In at least one instance, a student had succeeded in finishing the eleventh grade in another American high school before seeking – and being denied – enrollment at Proctor. As a result, the District's policy and its enforcement harm not only Affected Immigrant Students, but also any student that District officials *perceive to be* an Affected Immigrant Student.

94. Upon information and belief, the District's policy and its enforcement have had a chilling effect upon the enrollment of prospective immigrants in Utica. Many immigrant students did not seek to enroll in Proctor High School because they learned from District employees, and subsequently community and family members, that they cannot attend Proctor if they are over 16 years old. This has resulted in many of these individuals not attempting to enroll at Proctor at all.

95. Furthermore, the District's request for and use of immigration documents, such as I-94 forms, as part of that enrollment process would reveal the immigration status of the student or their parent or guardian. Upon information and belief, this policy also has a chilling effect upon the enrollment of prospective Affected Immigrant Students who may be undocumented.

CLAIMS FOR RELIEF

First Cause of Action

Declaratory and Injunctive Relief Against Defendant Utica City School District Board of Education, Defendant Utica City School District, and Defendant Bruce Karam for Violation of the Equal Educational Opportunities Act

96. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

97. The Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703, provides in relevant part that no district:

shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by:

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(f) the failure by an educational agency to take appropriate action to

overcome language barriers that impede equal participation by its students in its instructional programs.

98. Through their actions and inactions, as set forth above, the Defendants deliberately segregated Affected Immigrant Students, and those perceived to be Affected Immigrant Students, from the general student population at Proctor High School, because of their national origin and perceived language ability.

99. Through their actions and inactions, as set forth above, the Defendants failed to take appropriate action on behalf of Affected Immigrant Students, and those perceived to be Affected Immigrant Students, to overcome language barriers that interfere with and impede their equal participation in the District's instructional programs. The conduct of the Defendants, as set forth above, has a discriminatory effect based on national origin and, as a result, has violated and continues to violate the rights of Affected Immigrant Students, and those perceived to be Affected Immigrant Students, under the Equal Educational Opportunities Act.

100. As a result of the Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, unequal instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief remedying these ongoing and systemic violations.

Second Cause of Action

Declaratory and Injunctive Relief Against Defendant Utica City School District Board of Education and Defendant Utica City School District for Violation of Title VI of the Civil Rights Act of 1964

101. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

102. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, provides that no person in the United States shall, on the basis of race, color, or national origin, be denied the benefits of or be subject to discrimination under any program receiving federal funding.

103. As recipients of federal funding, the Board and the District were prohibited from discriminating against Affected Immigrant Students, and those perceived to be Affected Immigrant Students, by excluding them from instructional services, failing to provide them with instructional services, or providing them with unequal services on the basis of their national origin.

104. Through their actions and inactions, as set forth above, Defendants Utica City School District Board of Education and the Utica City School District discriminated against Affected Immigrant Students, and those perceived to be Affected Immigrant Students, on account of their national origin.

105. As a result of these Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have and will continue to suffer from the lack of a high school education, unequal instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief remedying these ongoing systemic violations.

Third Cause of Action

Declaratory and Injunctive Relief Against Defendant Utica City School District Board of Education, Defendant Utica City School District, and Defendant Bruce Karam for Violation of the New York Education Law

106. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

107. New York Education Law § 3202(1) provides that any person over five and under twenty-one years of age, who lives in a school district and has not received a high school diploma, is entitled to attend public school in the district.

108. Through their actions and inactions, as set forth above, Defendants have violated the rights of Affected Immigrant Students, and those perceived to be Affected Immigrant Students, under New York Education Law § 3202(1).

109. As a result of the Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, unequal instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief remedying these ongoing and systemic violations.

Fourth Cause of Action

Declaratory and Injunctive Relief Against Defendant Utica City School District Board of Education, Defendant Utica City School District, and Defendant Bruce Karam for Violation of the New York Education Law

110. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

111. New York Education Law § 3201 provides that no person shall be refused admission into or be excluded from any public school in the state of New York on account of national origin.

112. Through their actions and inactions, as set forth above, Defendants have violated the rights of Affected Immigrant Students, and those perceived to be Affected Immigrant Students, under New York Education Law § 3201.

113. As a result of the Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, unequal instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief remedying these ongoing and systemic violations.

Fifth Cause of Action

Declaratory and Injunctive Relief Against Defendant Utica City School District Board of Education, Defendant Utica City School District, and Defendant Bruce Karam for Violation of the Fourteenth Amendment's Equal Protection Clause

114. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

115. Through their actions and inactions, as set forth above, the Defendants violated the rights of Affected Immigrant Students, and those perceived to be Affected Immigrant Students, as protected by the Fourteenth Amendment's Equal Protection Clause, by discriminating against them because of their national origin.

116. As a result of Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, inferior instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief, under 42 U.S.C. § 1983, remedying these ongoing systemic constitutional violations.

Sixth Cause of Action

Declaratory and Injunctive Relief Against the Defendant Utica City School District
Board of Education, Defendant Utica City School District, and Defendant Bruce
Karam for Violation of the Fourteenth Amendment Due Process Clause

117. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

118. Through its actions and inactions, as set forth above, the Defendants, including the Board or its designee, violated the rights of Affected Immigrant Students and those perceived to be Affected Immigrant Students, as protected by the Fourteenth Amendment's Due Process Clause, by denying them their right to attend high school without providing them with notice or an opportunity to be heard.

119. As a result of the Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, inferior instructional programs and services, and loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief, under 42 U.S.C. § 1983, remedying these ongoing systemic constitutional violations.

Seventh Cause of Action

Declaratory and Injunctive Relief Against the Defendant Utica City School District
Board of Education, Defendant Utica City School District, and Defendant Bruce
Karam for Violation of the New York State Constitution's
Due Process Clause

120. The Attorney General re-alleges and incorporates by reference the allegations in the foregoing paragraphs of this complaint as fully set forth herein.

121. Through its actions and inactions, as set forth above, the Defendants, including the Board or its designee, violated the rights of Affected Immigrant Students and those perceived to be Affected Immigrant Students, as protected by the New York State Constitution's Due Process Clause, by denying them their right to attend high school without providing them with notice or an opportunity to be heard.

122. As a result of Defendants' violations Affected Immigrant Students, and those perceived to be Affected Immigrant Students, have suffered and will continue to suffer from the lack of a high school education, inferior instructional programs and services, loss of educational and employment opportunities. The Attorney General seeks declaratory and injunctive relief remedying these ongoing systemic constitutional violations.

REQUESTS FOR RELIEF

WHEREFORE the Plaintiff respectfully requests that the Court:

- a. Assume jurisdiction over this matter;
- b. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under the Equal Educational Opportunities Act;
- c. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under Section 601 of Title VI of the Civil Rights Act of 1964;
- d. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under sections 3202 and 3201 of the New York Education Law;
- e. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under the Fourteenth Amendment Equal Protection Clause;
- f. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under the Fourteenth Amendment Due Process Clause;
- g. Declare that Defendants' acts and omissions violated the rights of LEP immigrants aged 17-20, and of those individuals perceived to be such LEP immigrants, under the New York State Constitution's Due Process Clause;
- h. Enter permanent injunctive relief, in the form of:
 1. an order requiring Defendants to take affirmative steps to enroll LEP immigrants aged 17-20 in Proctor High School if they want to go to high school, are residents of the Utica City School District, and have not yet turned 21 years old;
 2. an order requiring Defendants to adopt policies, procedures, and training ensuring that Defendants end their ongoing violations of the Equal Educational Opportunities Act, Title VI, the U.S. and New York Constitutions, and state law; and to publicize to the community at large those new policies and procedures;
 3. an order requiring the District to hire an enrollment ombudsman, not drawn from existing District personnel, responsible for all prospective student enrollment within the District;

4. an order requiring Defendants to retain, at their own expense, an independent monitor to ensure compliance with said policies, procedures, and training;
 5. an order requiring Defendants to provide compensatory educational services to LEP immigrant students aged 17-20, and those individuals perceived to be such students, who were previously denied enrollment at Proctor High School, in order to remedy the educational deficits caused by Defendants' policy and practice of excluding them from Proctor;
 6. an order requiring Defendants to obtain approval from the Attorney General prior to offering any new, or substantially modifying any existing, "newcomer" or alternative educational program intended for immigrant students in the District; and
- i. Grant any other relief the Court deems necessary and proper.

Dated: November 17, 2015
New York, New York

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By:


Kristen Clarke (Bar No. 517721)

Bureau Chief
Justin Deabler (admission pending)
Diane Lucas (admission pending)
Ajay Saini (admission pending)
Assistant Attorneys General
Civil Rights Bureau
Office of the New York State Attorney General
120 Broadway
New York, New York 10271
Tel. (212) 416-8250
Fax (212) 416-8074
Kristen.Clarke@ag.ny.gov
Justin.Deabler@ag.ny.gov
Diane.Lucas@ag.ny.gov
Ajay.Saini@ag.ny.gov