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April 12, 2011

BY ELECTRONIC TRANSMISSION AND VIA FACSIMILE

Erroll B. Davis Jr.
Office of the Chancellor
Board of Regents of the University System of Georgia
270 Washington Street, SW, Suite 7025
Atlanta, GA 30334

RE: Board of Regents Policy 4.1.6 – Admission of Persons Not Lawfully Present in the United States; Board of Regents Policy 4.3.4 – Verification of Lawful Presence

Dear Chancellor Davis,

On behalf of the American Civil Liberties Union (ACLU) Foundation of Georgia, I am writing to ask that you take immediate steps to repeal Board of Regents (BOR) Policy 4.1.6, Admission of Persons Not Lawfully Present in the United States, which denies access to higher education for undocumented students at the five most selective institutions in the University System of Georgia (USG). As set forth below, Policy 4.1.6 is contrary to principles of fundamental fairness and public policy and, as confirmed by the BOR's own findings, unnecessary to address concerns about eliminating costs to taxpayers and preserving seats for lawfully present students.

In addition, the ACLU of Georgia has learned that USG institutions across Georgia that are *not* covered by Policy 4.1.6 are misapplying both Policy 4.1.6 and Policy 4.3.4, which requires verification of lawful presence for the limited purpose of granting in-state tuition, by conditioning acceptance or registration for Fall 2011 on verification of students' lawful presence in the United States. These policies and practices mislead students as to the actual admission and registration requirements at USG schools and raise significant privacy concerns by inquiring into student immigration status without a basis for doing so. We therefore ask that, at a minimum, you instruct USG institutions as to the limited application of Policies 4.1.6 and 4.3.4 and direct all USG institutions to immediately remove all erroneous information regarding the policies from their admissions and registration materials.

Analysis

On October 12, 2010, the ACLU of Georgia was joined by 30 Georgia-based organizations and churches in asking the Board of Regents to reject what is now Policy 4.1.6, the policy denying access to higher education for undocumented students at Georgia's five most selective institutions. In our letter, we cited a number of reasons rooted in principles of fundamental

fairness and economic considerations for our state. We are attaching a copy of that letter for your reference.

Today, we are writing to you again to ask that you repeal this discriminatory policy for the same reasons we detailed in the October 2010 letter. The policy is unnecessary to address possible concerns regarding preserving seats for lawfully present students, since as you are well aware, the investigation conducted by the Committee on Special Residency Verification which was assembled earlier this year by the Board of Regents, found that only 501 of 310,000 students within the USG were undocumented; and only 29 of those students were enrolled in selective institutions.¹ In addition, as you yourself have attested, allowing undocumented students to enroll in public colleges and universities in Georgia imposes no additional cost on the state, as they are already paying out-of-state tuition, which more than fully covers the cost of their education.²

In addition, we have learned that this unnecessary policy has had even more damaging consequences, as it is being misinterpreted and misapplied. In fact, both Policy 4.1.6 and Policy 4.3.4 are being misapplied by USG institutions across Georgia. Even though they do not fall under Policy 4.1.6, several schools appear to have improperly conditioned acceptance or registration for Fall 2011 upon verification of students' lawful presence in the United States, potentially cutting off any and all access to higher education for undocumented students.

As a general matter, “[a]dmission . . . [to] USG institutions [is] to be handled by the institutions within the framework of regulations of the Board of Regents.” BOR Policy 4.1.1. BOR Policy 4.1.6 provides that, effective Fall 2011:

A person who is not lawfully present in the United States shall not be eligible for admission to any University System institution which, *for the two most recent academic years, did not admit all academically qualified applicants* (except for cases in which applicants were rejected for non-academic reasons).

Id. (emphasis added), available at

http://www.usg.edu/policymanual/section4/policy/4.1_general_policy/. As you have repeatedly explained, the Policy 4.1.6 is meant to be limited in scope, applying only to the five USG institutions that did not admit all academically qualified applicants in the past two academic years: Georgia College & State University, Georgia Health Sciences University, Georgia State University, Georgia Institute of Technology, and the University of Georgia.³

BOR Policy 4.3.4 further requires verification of immigration status for the sole purpose of tuition classification. It provides that

[e]ach University System institution shall verify the lawful presence in the United States of *every successfully admitted person applying for resident tuition status*,

¹ See Testimony on House Bill 59 – Chancellor Erroll B. Davis Jr. University System of Georgia to the House Higher Education Committee (Feb. 15, 2011).

² *Id.*

³ *Id.*

as defined in Section 7.3 of this Policy Manual, and of every person admitted to an institution referenced in Section 4.1.6 of this Policy Manual.

Id., available at http://www.usg.edu/policymanual/section4/policy/4.3_student_residency/ (emphasis added). Thus, Policy 4.3.4 mandates verification of only those students who have already been successfully admitted to a USG institution and seek in-state tuition. As you have explained, the Board issued this policy to help ensure that students who are presently ineligible for in-state tuition pay out-of-state tuition rates.⁴

Nonetheless, several USG institutions that are *not* among the five institutions covered by Policy 4.1.6 have indicated in their admissions materials that acceptance or registration for Fall 2011 is contingent on verification of lawful presence in the United States. For example, the website of the North Georgia College & State University states that, pursuant to Policy 4.1.6, “[a]cceptance . . . is conditional upon U.S. lawful presence verification.”⁵ The Office of the Registrar of Valdosta State University announces that “[a] person who is not lawfully present in the United States is not eligible for admission to Valdosta State University.”⁶ Likewise, the admissions website of Augusta State University states that “[u]pon acceptance . . . , all students are required to verify their lawful presence in the United States in order to register for classes.”⁷

Similarly, several USG institutions erroneously suggest that Policy 4.3.4 requires verification of lawful presence for acceptance or registration. The application forms of numerous USG schools correctly indicate that Policy 4.3.4 subjects applicants for in-state tuition to verification, but also instruct that “[a]cceptance . . . is conditional until lawful presence is verified.”⁸ This requirement is inconsistent with Policy 4.3.4, which on its face applies only to students who have already been “successfully admitted.” Similarly, the admissions website of Georgia Highlands

⁴ *See id.*

⁵ Verification of Lawful Presence in the United States, North Georgia College & State University, <http://www.northgeorgia.edu/lawfulpresence/> (last visited April 6, 2011).

⁶ Office of the Registrar, Valdosta State University, <http://www.valdosta.edu/registrar/> (last visited April 6, 2011). The Registrar’s website erroneously references “House Bill 59: Lawful Presence Requirement for New and Readmitted Students,” even though HB 59 was not enacted this legislative session.

⁷ Verification of Lawful Presence in the United States, Augusta State University, <http://www.aug.edu/admissions/LawfulPresence.htm> (last visited April 6, 2011).

⁸ *See* Armstrong Atlantic State University, International Student Application, available at http://www.armstrong.edu/images/international/International_Student_Application.pdf%20 (last visited April 6, 2011); Darton College, Application for Admission, available at http://www.darton.edu/admin/admissions/docs/201102-Application_v2.pdf (last visited April 6, 2011); East Georgia College, Former Student Application, available at <http://www.ega.edu/registrar/Forms/FormerStudentApp.pdf> (last visited April 6, 2011); Georgia Highlands College, Readmission Application, available at https://www.highlands.edu/inc/files/userfiles/1-b2a200b3ba44340-ghc_readmission_application.pdf (last visited April 6, 2011); Georgia Southern University, Undergraduate Application for Admission, available at http://admissions.georgiasouthern.edu/AdmissionsApp_Web.pdf (last visited April 6, 2011); North Georgia College & State University, Application for Undergraduate Admission, available at <http://www.northgeorgia.edu/uploadedFiles/Application.pdf> (last visited April 6, 2011); South Georgia College, Enrollment Application, available at http://www.sgc.edu/prospective/admissions/documents/SGC_Application.pdf (last visited April 6, 2011); University of West Georgia, Undergraduate Application for Readmission, available at [http://www.westga.edu/assetsDept/registrar/Readmission_Application_Updated\(5\).pdf](http://www.westga.edu/assetsDept/registrar/Readmission_Application_Updated(5).pdf) (last visited April 6, 2011); Waycross College, Application for Admission, available at <http://www.waycross.edu/Compserv/forms/Application.pdf> (last visited April 6, 2011).

College states correctly that “[a]pplicants who have no legal documentation to be in the U.S. are eligible to attend GHC” at out-of-state tuition rates, but also states that “[a]cceptance to Georgia Highlands College is conditional upon U.S. lawful presence verification.”⁹ Kennesaw State University extends Policy 4.3.4 to student registration, instructing that “[s]tudents will have a registration hold placed on their record until the lawful presence verification requirement is satisfied.”¹⁰

These statements strongly mislead students as to the requirements of admission and registration at USG institutions. Moreover, these statements raise serious privacy concerns by potentially inquiring into student immigration status without any basis for doing so.

In short, because Policy 4.1.6 is fundamentally unjust, economically shortsighted, and unnecessary, we ask that you repeal it.

We also ask that at a minimum, you take immediate steps to instruct USG institutions as to the limited application of Policies 4.1.6 and 4.3.4. Specifically, we ask that you:

- Issue a formal directive to all USG institutions as to the proper application of Policies 4.1.6 and 4.3.4;
- Mandate uniform, model language for USG institutions that are not covered by Policy 4.1.6 to inform prospective applicants of Policy 4.3.4 in their admissions and registration materials and websites;
- Direct USG institutions that are not covered by Policy 4.1.6 to review and revise their admissions and registration procedures, materials, and websites to properly implement Policy 4.3.4;
- Direct USG institutions to inform all pending applicants of the proper application of Policies 4.1.6 and 4.3.4, both via its website and email and/or direct mail;
- Issue a memorandum explaining the application of Policies 4.1.6 and 4.3.4 to all school superintendents, high school principals, guidance counselors, and other state and county education officials responsible for advising students on the college application process; and,
- Monitor and record USG institutions’ implementation of Policies 4.1.6 and 4.3.4.

Please inform us of any and all steps that you take to remedy this situation. You may reach me by phone at (770) 303-8111 or by email at ashahshahani@acluga.org. We are also happy to meet with you to discuss our concerns and discuss remedies, foremost among which would be

⁹ Georgia Highlands College, Verifying Lawful Presence, available at <http://www.highlands.edu/site/admissions-verifying-lawful-presence> (last visited April 6, 2011).

¹⁰ Kennesaw State University, Lawful Presence Verification, <http://www.kennesaw.edu/enrollmentservices/lawfulpresence.html> (last visited April 6, 2011).

the repeal of Policy 4.1.6. We thank you in advance for your prompt attention to this matter.

Sincerely,

Azadeh Shahshahani
National Security/Immigrants' Rights Project Director