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**MEMORANDUM**

TO: Clif Black, Superintendent  
Evergreen School District

FROM: Lori E. Pegg, Assistant County Counsel *lep*  
Kevin M. Hammon, Deputy County Counsel *KMH*

RE: Proof of Residency

DATE: January 15, 2008

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**OPINION REQUESTED**

You asked us to review Evergreen School District's policy and practice regarding the documentation it requires for proof of a student's residence to determine whether it complies with state and federal law.

**SHORT ANSWER**

The Evergreen School District's ("Evergreen's") current policy and practice regarding proof of residency complies with all state and federal legal requirements. Under the law, Evergreen may rely on a wide range of information and documents in order to determine where the parents of its students reside as long as it does not require documentation that would disclose a student's immigration status. Evergreen's current proof of residency practice allows parents to submit a variety of documentation to establish residency regardless of their immigration status or their children's immigration status. Therefore, Evergreen's current practice complies with the law.

**DISCUSSION**

California students are generally expected to attend school in the district in which their parents reside.<sup>1</sup> (Cal. Educ. Code §48200.) In order to verify "residence," California school districts may rely on a wide range of documents and parent representations. (Legal Advisory

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<sup>1</sup> The most common exceptions to this rule are codified in California Education Code §48204. For example, a pupil who lives with a caregiving adult may attend school in the district where the caregiver lives. (Cal. Educ. Code § 48204(a)(4).)

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LO: 1-95 (March 3, 1995), Calif. Department of Education, Legal and Audits Branch.) “There is no particular list of documents that may be accepted; any reasonable evidence of residence is sufficient.” (*Ibid.* (underline in original).) School districts have discretion to develop reasonable procedures for the verification of each student’s residence within the district. (*Ibid.*)

A district’s discretion is limited, however, if the district’s procedures are likely to disclose a student’s immigration status. School districts may not refuse to enroll students based upon a student’s immigration status. (*Plyler v. Doe*, 457 U.S. 202 (1982).) In *Plyler v. Doe*, the U.S. Supreme Court dealt with a Texas statute that withheld state funds from local school districts for the education of children who were not legally admitted into the country, and authorized school districts to deny enrollment to such children. (*Id.* at 205.) The Supreme Court held that this statute was unconstitutional under the Fourteenth Amendment. (*Plyler*, 457 U.S. 202.)

*Plyler* suggests that school districts may not require parents to present “proof of residence” documents that only U.S. citizens and/or legal residents would possess. Undocumented immigrants would be totally excluded from Evergreen’s schools if, for example, Evergreen required parents to provide U.S. passports in order to establish their residence within the district. Therefore, Evergreen’s residence verification process must contemplate “proof of residence” documents that parents can provide regardless of their immigration status or their children’s immigration status.

Although not applicable here, the Education Code allows school districts adjacent to an international border to require a “wide range” of documents and representations as reasonable evidence that its students meet the residency requirement. (Cal. Educ. Code §48204.6.) For example, the school district may accept documents, including but not limited to property tax payment receipts, rent payment receipts, utility payment receipts, and declarations of residency. (*Ibid.*) Significantly, parents may possess these documents regardless of their immigration status or their children’s immigration status. In contrast, only U.S. citizens and legal residents will be able to provide documents such as voter registration cards, passports, and drivers licenses.

Evergreen’s current policy and practice for proof of residency requires parents to present documents verifying their residence. Importantly, Evergreen allows parents to establish residency using documents that they might possess independent of immigration status. For example, Evergreen allows parents to submit utility bills, rental agreements, bank statements, and paycheck stubs. Evergreen’s practice provides undocumented immigrants with different types of documents that they may use to verify their residence. Accordingly, Evergreen’s residency policy and practice does not discriminate against undocumented immigrants. Therefore, it complies with the applicable legal authorities.