IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

WINSTON CLARKE and LISA GREENE-CLARKE,) *1726 33rd Place SE, Washington, DC 20020,*) **LUCINDA WOODLAND,**) *2614 Branch Avenue SE, Washington, DC 20020,*) **DENEANE PROCTOR,**) *22 Randle Circle SE, Washington, DC 20019,*) **ADRIA HENSON,**) *614 Madison Street NE, Washington, DC 20011,*) **MARIA THOMPSON-PUMPHREY,**) *4320 Livingston Road, SE Apt. C, Washington, DC 20032,*) **LARISSA CROSSON,**) *5314 East Capitol Street, NE, Washington, DC 20019,*) **LISA BURKETT,**) *3427 Reservoir Road, NW, Washington, DC 20007,*) **RENEE POWELL,**) *5375 Blaine Street, NE, Washington, DC 20019,*) **individually and on behalf of similarly-situated**) **JOHN DOE NOS. 1-212,**)) Plaintiffs,)) v.) Case No. _____) **DISTRICT OF COLUMBIA, through its**) **OFFICE OF THE STATE**) **SUPERINTENDENT OF EDUCATION,**) *Serve: Attorney General of the District of Columbia*) *441 4th Street NW, Room 600 South*) *Washington, DC 20001,*)) Defendant.) _____)	

COMPLAINT FOR A DECLARATORY JUDGMENT, TEMPORARY RESTRAINING ORDER AND INJUNCTION

COME NOW WINSTON CLARKE and LISA GREENE-CLARKE, LUCINDA M. WOODLAND, DENEANE PROCTOR, ADRIA HENSON, MARIA THOMPSON-PUMPHREY, LARISSA CROSSON, LISA BURKETT, and RENEE POWELL,

individually and on behalf of similarly-situated JOHN DOE NOS. 1-212[1] ("Plaintiffs"), through undersigned counsel, and for their Complaint against the District of Columbia and its Office of the State Superintendent of Education ("OSSE"), state as follows:

OVERVIEW

1. This case arises from recent, unprecedented actions, taken in violation of Plaintiffs' due process and other rights, by OSSE, which has wrongfully declared at least 164 and up to 220 students at Duke Ellington School of the Arts ("Ellington") ineligible to attend DC public schools, told them that non-resident tuition is or may be imposed, and referred Plaintiffs to the DC Attorney General for further legal actions, based on OSSE's supposed findings of "residency fraud." The actual basis for OSSE's stated findings of fraud has still not been revealed. While OSSE's actions in this investigation raise a multitude of concerns, the Complaint focuses narrowly on OSSE's latest decision letter, which still fails to give Plaintiffs proper notice of the decision and appellate process. Because those rights expire soon (Friday, June 8, 2018), **this Complaint (and related TRO motion) seek relief by <u>Thursday at 5:00pm</u>**, and a Declaratory Judgment that OSSE's latest Notice letter is inadequate, null and void. Plaintiffs must be advised of their rights as DC law requires, and OSSE cannot fairly benefit from its own failures to

[1] John Doe Nos. 1-212 connote all other persons on a list of up to 220 (164 + 56) names OSSE has publicly identified (generically) as students to whom it has or may have sent Notices as "deemed" non-residents ineligible to return to Duke Ellington School of the Arts, and subject to non-resident tuition payments. OSSE initially said it sent 164 families such notices, but also said another 56 were "under investigation"; some or all of these 56 additional families now appear to have been added. Although 5A DCMR § 5008.6 requires that OSSE make the results of its investigation available upon request, OSSE has still not shared its actual list of names of affected parties with Duke Ellington School of the Arts' administration, or with anyone at all who might be able to advise these families on their rights (including whether to appeal their Notice), despite undersigned counsel's repeated requests.

provide that advice of rights. This Court should declare that these cases cannot become "final" agency actions until Plaintiffs receive their due process rights, and further restrain OSSE from issuing new Notice letters until it first demonstrates compliance with DC law.

PARTIES

2. Plaintiffs are representatives of students and/or students who currently attend the Duke Ellington School of the Arts ("Ellington"), a public arts high school in Washington, DC – a group of up to 220 students OSSE may have deemed non-residents.

3. OSSE, established under the Office of the Mayor, serves as the state education agency for the District of Columbia, and under applicable federal law.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is properly invoked under D.C. Code § 11-921(a)(6). Personal jurisdiction is appropriate over the Defendant under D.C. Code § 13422. Venue is appropriate in this Court, as the actions complained of herein occurred in the District of Columbia.

STATEMENT OF FACTS

5. On or about May 9, 2018, OSSE issued an apparent form letter, which was ostensibly mailed to 164 of the Plaintiffs in this action. *See* Exhibit A. OSSE's initial form letter stated that "[a]n investigation of District residency for the student referenced below has been conducted by the Office of Enrollment and Residency. In accordance with SA DCMR §5009 § 5009 [sic], OSSE hereby finds that the above-named student(s) is NOT a resident of DC, and thus is, ineligible to attend a District school tuition-free."

6. In an earlier case filed in this Court by many of these same Plaintiffs, *Clarke et al. v. District of Columbia*, Case No. 2018 CA 3572 B (D.C. Super. Ct.), a

Declaratory Judgment and Temporary Restraining Order was requested, seeking to invalidate OSSE's initial Notice letter because it had utterly failed to advise Plaintiffs of the basis of OSSE's decision as well as their appellate and other rights, violating both D.C. law and Plaintiffs' due process rights. At a TRO hearing held in this Court on May 23, 2018, OSSE acknowledged that its Notice letters could not be defended, and agreed to withdraw them all. After the Court noted that Plaintiffs had received 100% of the relief they had sought, the case was dismissed as moot. *See* Exhibit B.

7. After that hearing, Plaintiffs' counsel repeatedly urged OSSE, through its counsel and otherwise, to work collaboratively with Ellington parents. Plaintiffs' counsel noted how there appeared to be some very clear examples of Ellington families who were clearly DC residents, and that the better course would be for OSSE to first sit down with Ellington families informally to ensure its decisions were correct, by sharing its reasons for deeming them non-residents with 10 days to respond, yielding prompt resolutions, rather than bulling ahead with new Notice letters against potentially innocent parties, in a manner that would also then force these Ellington families to file appeals, clog the Office of Administrative Hearings unnecessarily, and increase litigation costs. Plaintiffs' counsel further warned OSSE that the proposed replacement letter OSSE had shared at the TRO hearing was also deficient, and would not satisfy D.C. law. *See* Exhibit C.

8. OSSE decided to proceed with new Notices anyway, thereby once again accusing at least 164 (and as many as 220) Ellington families of having committed "fraud" *without ever talking to them*. Although Plaintiffs' counsel had openly offered to discuss with OSSE the deficiencies he saw in OSSE's proposed Notice letter shared at the TRO hearing, OSSE declined the invitation, and said it would make changes on its own.

9. On May 24, 2018, OSSE issued a new round of what also clearly appear to be form letters. *See* Exhibit D. Many Ellington families received these letters last week. OSSE did not try to send its decisions to families by any other method, including e-mail.

10. OSSE'S new Notice letters still do not provide any basis for its findings, explain any supposed deficiencies in the information these families previously provided, or provide any details at all on why OSSE concluded that the student is not a DC resident. In this regard, OSSE's new Notice letters have simply added a single new sentence (and the very same sentence) to each and every one of its new letters it has sent out: "Review of documentation provided to the school and publicly available information indicates a primary residence in another jurisdiction." The other jurisdiction referenced is never specified. No actual description of the basis for OSSE's decisions is provided at all – OSSE has simply included this same rote description in every new Notice letter sent out.

11. OSSE's new Notice letter has added a new discussion of appeal rights – but its description of the applicable appeal deadline is confusing and (in bold type) ***wrong***, thereby now placing many Ellington families at risk of forfeiting their rights unwittingly, if they simply follow the flawed instructions contained in OSSE's new Notice letter.

12. On information and belief, OSSE also has made no attempt in its Notice letters to accommodate the language needs of any Ellington families whom OSSE's own records surely show primarily speak a different, foreign language.

13. The very serious consequences and deadlines set forth in OSSE's new Notice letter have therefore not adequately been communicated to all Ellington families. OSSE's Notice letter to Plaintiffs fails in a variety of ways to comply with due process and the notice requirements of DC law. OSSE's new Notice letter, just as its initial

Notice letter which had prompted Plaintiffs' earlier lawsuit, continues to be deficient and cannot fairly start Plaintiffs' appeal clock, and must now be declared null and void.

14. That conclusion is particularly warranted given OSSE's continuing refusal to release (even to Ellington's administration) its lists of affected Ellington students, including OSSE's list of 164 students initially "deemed" non-DC residents, plus the separate list of 56 students whom OSSE then said were still "under investigation," who now may also be at risk – a refusal which represents a willful, bad faith attempt by OSSE to hinder third-party efforts to reach these affected parties to advise them that they are under investigation and of their due process rights, including their June 8, 2018 deadline to appeal OSSE's findings before it expires.

15. Without Court action, it is likely that many Plaintiffs may fail to properly exercise their rights of appeal before that deadline expires on June 8, 2018.

16. Without Court action, after June 8, 2018 all un-appealed OSSE's Notice letters may become final agency actions – thus resulting (as a collateral consequence) in possible legal bars to future challenges or appeals, with Plaintiffs thereafter prejudiced through restrictions on their right to challenge OSSE's residency determination, their rights to have their students attend Ellington or another DCPS school, and their right to avoid out-of-state tuition charges.

17. Even among Plaintiffs who may have independently learned of this upcoming appeal deadline, OSSE's failure to provide any real basis for its decision means that these Plaintiffs cannot fairly evaluate their options and make a fair decision on how to proceed at present, without a better understanding of their prospects on appeal.

18. To prevent their loss of due process and other rights, Plaintiffs now find it necessary to approach this Court yet again, seeking immediate relief as warranted.

CLAIMS FOR RELIEF

Count One
Violation of DC Laws and Regulatory Requirements
(Under 5A DCMR §§ 5009.2 & 5009.3)

19. Plaintiffs hereby incorporate all previous paragraphs of this Complaint as if set forth herein verbatim.

20. Plaintiffs seek a declaratory judgment that OSSE's Notice letter issued on May 24, 2018 fails to comply with the legal requirements of DC law, and that it should be declared null and void, rather than starting any clock on deadlines to request review.

21. District of Columbia law, codified in 5A DCMR § 5009 ("Non-Resident Students: Finding of Non-Residency and Notification"), lays out the procedures that must be followed when OSSE makes a finding of non-residency. These requirements of DC law were not followed in OSSE's Notice letters sent to any of these Plaintiffs.

OSSE's Failure to Adequately Deliver its Notice Letters as Legally Required

22. 5A DCMR § 5009.2 states, "When OSSE issues a finding that a student is not a resident of the District of Columbia, OSSE shall provide the adult student, the self-supporting student, or the parent, guardian, custodian or other primary caregiver of the minor student written notification of the finding and an opportunity for review as specified in this chapter. The written notification ***shall*** be delivered by OSSE through he following methods: (a) By mail to the last known home, work or school address on file with the LEA for the student and to the out-of-District address of record, if any; ***and*** (b) ***By e-mail***, to the last known e-mail address of the person seeking to enroll the student, if

known to OSSE." (emphasis added). Here, in addition to the fact that **no such review was ever offered by OSSE,** an additional issue is that **OSSE does not appear to have sent its notices via e-mail to a *single one* of the 164+ affected parties, despite its *clear obligation to do so whenever such an e-mail address is known to OSSE*.** In light of OSSE's own description of its Ellington investigation as including background checks and social media, plus the seizure of all of Ellington's school residency records, plus other investigation performed, it is utterly inconceivable that OSSE has no such e-mail addresses. **OSSE has *failed in good faith* to provide this type of notice as required by law, which is clearly designed to reasonably ensure that *all* affected parties are *in fact* advised that their residency claims are at risk and about to be forfeited.**

23. OSSE's failure above is also ***exacerbated*** by its ***bad faith*** refusal to share any lists of affected students with anyone affiliated with Ellington, wholly eliminating the possibility of third party notice which might at least mitigate some notice deficiencies. Several Ellington families have also described OSSE Notice letters being received at old, abandoned addresses. Accordingly, a very significant risk exists at present that many affected families have ***not received*** OSSE's May 24, 2018 letter, and are ***wholly unaware of impending appeal deadlines***. That is not satisfactory under § 5009.2's requirements.

OSSE's Failure to Provide any Real "Basis" for its Decision as Required

24. 5A DCMR § 5009.3(a) also states that the written notification shall "include the basis for finding that a student is a non-resident." **The OSSE Notice letter that Plaintiffs received *fails to satisfy this requirement*, since it fails to explain in any meaningful way the "basis" for OSSE's findings of non-DC residency.**

25. Following the last TRO hearing, and after undersigned counsel noted that even OSSE's proposed replacement letter was deficient because it failed to state any "basis" for OSSE's non-residency determinations at all, OSSE apparently decided to add a single sentence (and the same sentence) to each of its new Notice letters: "Review of documentation provided to the school and publicly available information indicates a primary residence in another jurisdiction." OSSE apparently now plans to try to argue that this rote, boilerplate language adequately discloses the "basis" for its conclusions.

26. OSSE's new language is utterly meaningless, however – and basically is a truism. OSSE is claiming that the "basis" for its finding of non-residency is that evidence exists of "a primary residency in another jurisdiction" – or stated only slightly differently, "The basis for our finding that you are a non-resident is that there is evidence you are a non-resident." Such circular reasoning cannot possibly satisfy § 5009.3(a)'s requirement.

27. Each and every known May 24 Notice letter sent to an Ellington family contains this exact same language. The basis for OSSE's findings is no more known or understood today than it was before this letter was sent. Ellington families remain wholly in the dark, left entirely clueless, about why the DC residency documentation they previously submitted to the school was rejected by OSSE as inadequate, and cannot make meaningful decisions about their prospects on appeal if they seek administrative review.

28. What OSSE is attempting here is precisely what § 5009.3(a) was *designed to prevent* – Notice of non-residency *invoked by mere form letter*. If this Court were to accept OSSE's argument, § 5009.3(a) would then become wholly meaningless, and due process would substantially diminish. In the future, OSSE would surely simply plug in

this *same boilerplate language into every case it ever handles*, and *no family ever again* will be able to learn the actual reason why OSSE has declared them a non-DC resident.

29. Rather than do what the regulation requires, and provide these families with the real explanation of OSSE's "basis" that they deserve and frankly need, OSSE continues to operate in secret, refusing even recent requests from some families for their investigation results – itself a separate violation of 5A DCMR § 5008.6. In sum, Ellington families still have no answer to *the most basic question there is*: *why* OSSE declared *their family* to be non-DC residents. OSSE's latest Notice letters do not satisfy § 5009.3(a)'s legal requirements and should therefore be declared null and void.

OSSE's Incorrect Explanation of Affected Families' Appellate Rights

30. 5A DCMR § 5009.3(b) also requires that the Notice "[n]otify the student or student's parent, guardian, custodian or other primary caregiver that they have ten (10) business days from the date the written notification is issued to request an administrative review of the non-residency finding by an impartial party or office[r] assigned by OSSE to review such matters and render a final decision." **While OSSE's new Notice letter does contain an advice of appeal rights, *its explanation in bold is wrong*. Perhaps the only thing worse than *no* explanation of appellate rights is an explanation that is *incorrect* – one that can lead a reader following its directions to then miss the appeal deadline. Yet that is exactly the situation OSSE's new Notice letter presents here.**

31. Despite the crystal clear regulatory language noted above – requiring notice that an appeal must be received "ten (10) business days" from the date notification "is issued," OSSE's latest Notice letter misstates both benchmarks. Its new Notice letter tells Ellington families (and ***in bold print***), that their appeals may be sent by email or "via

U.S. mail to the address provided below no later than **10 days after receipt of this letter**." (emphasis in original).[2] This description in bold print is wrong, on three different levels.

32. First, OSSE's listed **start date is wrong.** Under § 5009.3(b), the appeal clock **begins** on the date the notification is **issued** – here, May 24, 2018. But OSSE's Notice letter incorrectly states that the clock does not begin until the letter's **"receipt,"** which may be many days later, especially with the Memorial Day holiday intervening.

33. Second, OSSE's listed **number of days allowed is wrong.** Under § 5009.3(b), the number of days allowed is 10 "**business"** days. OSSE's letter, on the other hand, says the length of time allowed is simply **"10 days,"** which is incorrect.

34. Finally, OSSE's listed **method of filing is wrong**. Its Notice letter invites the reader to send in an appeal "**via U.S. mail** … no later than 10 days after receipt." But in truth, the regulations clearly require that an appeal must be **"filed with OSSE"** (***not*** merely placed in the mail) before the deadline expires. *See* 5A DCMR § 5010.1.

35. Several Ellington families did not "receive" OSSE's revised Notice letter before May 29. If those families now follow OSSE's advice contained in the Notice letter, they may miss the actual June 8, 2018 appeal deadline (10 business days from May 24, 2018). Similarly, Ellington families who follow OSSE's instructions and mail their appeals also may miss this appeal deadline, since not "filed with OSSE" by June 8, 2018.

36. Even if OSSE were to now offer to extend this deadline (and it has not yet offered to do so), even then it is not clear legally that OSSE has the power to extend such appeal deadlines unilaterally. Even if OSSE agreed to this, it remains quite possible that

[2] OSSE's letter at another point does say administrative review may be requested "within ten (10) business days from the date indicated above," but its only deadline described in **bold** is the one discussed above, which is simply wrong. At a minimum, OSSE's description of the applicable appeal deadline here is utterly confusing, and thus invalid.

a later administrative law judge or other judicial officer may view timely appeal notices as jurisdictional, or otherwise declare that OSSE's proposed extensions are invalid.

37. This risk that their appeals may be declared untimely and invalid should not be borne by Ellington families who were improperly advised by OSSE of their appeal deadlines.

OSSE's Omission of the Disenrollment Risks if an Appeal is Not Timely Filed

38. 5A DCMR § 5009.3(d) also requires OSSE to "[e]xplain that unless OSSE receives a request for administrative review of the non-residency finding within ten (10) business days … the non-resident finding will become the final administrative decision, the student will be disenrolled from the school and tuition will be owed for the period of time in which the student was enrolled but was not a District resident." **While OSSE's new Notice letter does warn of these tuition risks*, it fails to mention the possibility of student disenrollment*, which is a separate, specific warning the regulation *requires*. OSSE's Notice letter fails to note how more is potentially at stake than money, and Ellington parents thus have not been fully advised of their risks if they fail to appeal.**

39. This is not rocket science. 5A DCMR § 5009.3(b) **very specifically tells OSSE exactly what its letter must "[n]otify** the student or student's parent, guardian, custodian or other primary caregiver" concerning appeal deadlines. The same is true with § 5009.3(d)'s required notice of the risks of disenrollment. OSSE's **remarkable failure – even after having lost in Court and having to withdraw its Notice letters once – to simply read and follow its own regulations that it promulgated just last year** surely raises serious, broader questions about how thorough and accurate OSSE's actual residency determinations are likely to be. And in any event, because OSSE's second

Notice letters so plainly violate § 5009.3(b) and (d), omitting and/or wrongly advising Ellington families of their risks and appeal deadlines, these Notice letters cannot possibly be deemed adequate, and must be invalidated as null and void on this ground alone.

40. In sum, then, OSSE still fails to satisfy the most basic D.C. requirements for notice of non-residency: a reasonably fulsome attempt to deliver the notice, disclosure of the real basis for that notice, a warning of the full scope of risks at issue if they do not appeal, and a consistent, accurate description of appellate procedures if they do. Beyond these regulatory violations, D.C. Code § 38-311(b)(4) also discusses the need for the District of Columbia to provide "written notification of the determination of residency and other primary caregiver status to the person seeking to enroll the student, and, in the case of those whose documentation is found to be unsatisfactory, the reasons therefor and a written description of procedures for appellate review and appeal of the determination." A separate, *statutory* violation thus also exists.

41. In sum, OSSE's revised Notice letters sent to Plaintiffs remain deficient, since it was not adequately delivered, never advised Plaintiffs of OSSE's basis or reasons for its non-residency decision, omitted the full scope of risks involved if families fail to timely appeal, and incorrectly advised Plaintiffs of their appeal deadlines.

WHEREFORE, this Court should issue a Declaratory Judgment, finding OSSE's revised Notice letters to be in violation of DC's legal requirements, and thus null and void, and should further declare that OSSE's new Notice letters as issued cannot trigger Plaintiffs' appeal deadlines or allow any negative consequences to vest against Plaintiffs.

Count Two
Violation of Due Process and Equal Protection
(Under 42 U.S.C. §§ 1983 & 1988)

42. Plaintiffs hereby incorporate all previous paragraphs of this Complaint as if set forth herein verbatim.

43. Plaintiffs had clearly established rights under the Constitution of the Untied States, including but not limited to the right under the Fifth and Fourteenth Amendments to due process of law, and equal protection.

44. At all relevant times herein, OSSE and its agents, servants and employees, acting under color of state law, owed a continuing duty to reasonably ensure that the clearly-established federal constitutional and civil rights of Plaintiffs were not violated, and to reasonably ensure that Plaintiffs' rights in this regard were adequately protected.

45. By the activities described above, OSSE and its agents, servants and/or employees, acting under color of state law as conferred on them by the District of Columbia, violated these duties, by depriving Plaintiffs of their federal constitutional rights, including but not limited to:

a. Due Process of law, under the Fifth and Fourteenth Amendments, including the right to be properly advised of appellate procedures following an adverse judgment by an administrative agency; and

b. Equal Protection of the laws, under the Fifth and Fourteenth Amendments, including the right to avoid being selectively targeted for investigation.

46. OSSE and its agents, servants and employees, acting under color of state law, subjected Plaintiffs to the deprivations set forth above, in denial of their rights, privileges and immunities guaranteed to Plaintiffs by the United States Constitution.

47. The aforementioned acts, omissions and systemic deficiencies, as evidenced by OSSE's similar pattern of conduct imposed on each Plaintiff, and the same deficient OSSE Notice letter sent to each Plaintiff, represents a policy and custom which constitutes part of a pattern and practice of improper conduct by the District.

48. OSSE failed to take adequate and reasonable steps to end this improper course of conduct, or to ensure that the known constitutional and civil rights of Plaintiffs were not routinely violated, as confirmed by OSSE's continuing refusal to share its lists of affected students with Ellington, so that those rights violations might be mitigated, and its other ongoing and continuing violations as noted.

49. OSSE's actions were carried out as a function of the District of Columbia government, and/or with knowledge and consent of the District of Columbia government

50. The acts alleged herein violated clearly-established federal constitutional rights of the Plaintiffs, were not objectively reasonable, and were performed under circumstances in which no reasonable official in the aforementioned positions would fail to realize that his or her conduct represented a violation of Plaintiffs' civil rights.

51. The aforementioned acts were also carried out with deliberate indifference to Plaintiffs' known constitutional rights, with OSSE's refusal to release its lists of affected students, and its actions in blindly re-accusing every individual of fraud again, even after evidence of innocence had been presented and was known, representing a bad faith ratification by OSSE of a known deprivation of Plaintiffs' constitutional rights.

WHEREFORE, this Court should issue a Declaratory Judgment, finding OSSE's May 24, 2018 Notice letters to be in violation of the United States Constitution and Plaintiffs' clearly established civil rights, and thus null and void, and should further

declare that OSSE's Notice letters as issued cannot trigger Plaintiffs' appeal deadlines or allow any negative consequences to vest against Plaintiffs.

Count Three
Violation of D.C. Proof of Residency Statute and Municipal Regulations
(Under D.C. Code § 38-306 and 5A DCMR § 5008.6)

52. Plaintiffs hereby incorporate all previous paragraphs of this Complaint as if set forth herein verbatim.

53. D.C. Code § 38-306 ("Proof of Residency") requires a neutral process and key standards that the D.C. Government must adhere to when evaluating proof of residency. In particular, D.C. Code § 38-306 includes the following requirement:

> The methods used to determine residency status shall be consistent across District of Columbia public schools and public charter schools and shall be crafted to facilitate rather than hinder school enrollment of eligible students.

54. OSSE has plainly violated this statutory requirement, both by treating Ellington differently than other D.C. schools, and in a variety of ways by violating its obligation to facilitate rather than hinder school enrollment of eligible students.

55. With respect to OSSE's consistency of treatment among schools, OSSE's methods used with Ellington were clearly different than its treatment of other schools. *See* Exhibit E (May 14, 2018 letter). Indeed, OSSE's own press release, issued May 11, 2018, affirmatively admits this, stating that the methods OSSE used in this investigation of Ellington were "unprecedented." *See* *https://osse.dc.gov/release/osse-uncovers-suspected-residency-fraud-review-school-enrollment-records* (hereinafter "OSSE Press Release") (OSSE "made the unprecedented step of confiscating all residency files from the school in order to do further, in-depth investigation").

56. Moreover, OSSE's "methods used to determine residency status" have been the *opposite* of what the statute requires – with OSSE's actions regularly hindering rather than facilitating enrollment of eligible students. This has occurred in a variety of ways, as part of a systematic effort to deprive eligible students of their legal rights.

57. OSSE has accused at least 164, and perhaps as many as 220 Ellington families, of residency fraud, *without ever talking to them* so that they might explain why they were and remain eligible to enroll their students.

58. OSSE brazenly also continues to refuse to provide its investigation files, or even investigation results, to any of these Ellington families, with OSSE basically *hiding all of its evidence*, thereby preventing each of these Ellington families from even knowing what OSSE's residency concerns may be, so that they might address OSSE's concerns and explain why they were and are eligible to enroll their students.

59. OSSE also involved the Attorney General in this process prematurely, and inappropriately, thus hindering Ellington families' enrollment efforts, by eliminating possibilities of informal resolution and subjecting all parental enrollment efforts to fears of civil fines and prosecution. Although OSSE is only authorized to refer cases to the Attorney General's Office "if there is evidence that an individual *knowingly* supplied *false* information in connection with residency verification," 5A DCMR § 5012.3 (emphasis added), OSSE instead referred *every one* of its Ellington non-residency cases (including those who may have merely *lacked* sufficient documentation) to OAG. *See* OSSE Press Release ("OSSE is referring all findings of non-residency at Ellington to OAG"). Even worse, OSSE's May 9, 2018 Notice letters were grossly misleading, remarkably telling all 164 Ellington families that if they had any questions about OSSE's

letter, they should contact "Nicole Hill, at Nicole.Hill@dc.gov or (202) 727-4171." *Never disclosed* in OSSE's May 9, 2018 letter sent to Ellington families was the reality that Ms. Hill worked *not for OSSE, but for the Attorney General's Office.* Ellington parents then responded by leaving messages via email or voicemail with Ms. Hill's office, having *no idea OSSE had directed them to a prosecutor's office without a lawyer*. In the past week, several Ellington parents have now received calls from an OAG investigator, claiming he is "calling them back" to speak further about messages left with Ms. Hill. Rather than facilitating enrollment of eligible students, OSSE has placed these Ellington families in an untenable situation where informal resolution is uncertain, and they know every action, and everything said, is at risk of being placed under a microscope, hindering Ellington families' enrollment efforts by forcing some to consider the need to retain counsel before talking further to D.C. government officials.[3]

60. OSSE's May 9, 2018 letter also seriously hindered enrollments of students in myriad other ways. Rather than advising that the student could "remain enrolled … until a final administrative decision is made" – as the law required, 5A DCMR § 5009.3(c) – this OSSE letter did the opposite, *falsely* declaring at that point that the student "is ineligible to attend a District school tuition-free," directly hindering enrollment directly. The May 9, 2018 letter was also deficient in numerous other ways, such as by failing to provide OSSE's basis for its decision so that it might be addressed, never providing any opportunity for review, and omitting any mention of appeal rights at all – again, hindering reasonable efforts toward student enrollment.

[3] OSSE's improper actions in this investigation also raise the likelihood that any follow-up OAG investigations may be deemed to be improper "fruits of the poisonous tree," under *Wong Sun v. United States*, 371 U.S. 471 (1963) and its progeny.

61. *Absolutely nothing* in the May 9, 2018 letter was designed to facilitate (rather than hinder) enrollment by eligible families. Indeed, it seems apparent that OSSE's May 9, 2018 Notice letter, which omitted advice of appeal rights language that *had* been included in similar letters *previously* sent by OSSE to similarly-situated families at other schools, appears to have been part of an affirmative effort by OSSE to obtain "final" agency action on its Ellington non-residency findings *by default*.

62. This notion is only reinforced by OSSE's actions that ensued after its May 9, 2018 letter was sent, when certain Ellington parents who independently learned of their rights attempted to file appeals of OSSE's findings, and OSSE officials *literally turned them away and refused to accept their appeals*, in clear violation of law, even *falsely* telling these families that their only remaining remedy rested with OAG.

63. Similarly, OSSE refused (and still refuses) to provide its list of affected Ellington families to anyone affiliated with the school, so that eligible students might be advised of their rights by third-party sources, despite OSSE's failures, so that those rights might be invoked in an effort to preserve their enrollment opportunities.

64. After this Court's last TRO hearing, where OSSE agreed to withdraw all of its May 9, 2018 Notice letters, OSSE then rebuffed all efforts to try to sit down and resolve these cases through a process that would allow an opportunity for affected Ellington parents to learn of OSSE's residency concerns and respond and supplement their documentation as needed. Again, rather than adopting a process to facilitate enrollment, OSSE blocked it, and then sought to hinder it. The very next day after the TRO hearing, OSSE simply reissued new Notice letters, to every Ellington family that had received the May 9, 2018 Notice letters, plus more. OSSE ignored all indications

that its May 9, 2018 Notice letter had falsely accused some innocent Ellington families, including the eight named Plaintiffs who had proven themselves willing to publicly sue, appear in Court, and list their D.C. addresses on the previous Complaint. In many of those cases, OSSE itself has mailed its Notice letters *to these families' D.C. addresses*.

65. OSSE's decision to forge ahead does not emanate from any true belief that its decisions were surely correct. OSSE itself has *acknowledged* the possibility that some of its findings *may well be declared wrong*. OSSE's May 11, 2018 Report concedes that "OSSE anticipates that after all due process rights have been exhausted, the total number of confirmed non-residents could potentially decline from the current findings." But OSSE has now decided to reissue all Notice letters anyway, knowing full well it may well be falsely accusing innocent people of fraud (particularly since it has never even spoken to them), now for a second time, yet acting in reckless disregard of the harm it is causing.

66. OSSE's new May 24, 2018 letters, as noted above, are also deficient, and once again only hinder the enrollment of eligible students. OSSE failed to even attempt to e-mail anyone to ensure they got fair notice, and OSSE once again never provided any Ellington parents with any real basis for its decisions; it also misstated these families' appeal deadlines, putting families' rights at risk. OSSE also failed to accommodate the needs of foreign language households.

67. To this day, OSSE also continues to refuse to provide even the most basic information on why OSSE decided as it did, so that Ellington families might reasonably respond and pursue enrollment. In past non-resident cases involving students at other schools, OSSE has provided a copy of its investigation results to families accused of being non-residents. Here, however, OSSE has refused to provide its investigation

results to any Ellington parents, despite 5A DCMR § 5008.6's clear requirement that "OSSE shall make the results of an investigation available to … the person seeking to enroll the student … upon request." To be clear, that request is now reiterated herein.

68. Throughout this process, OSSE has essentially treated this situation as almost a game,[4] refusing to follow the rules or even pause to verify that its decisions were correct, before acting mostly in a way designed to simply run out the clock, so that its decisions could become final. It is time for such gamesmanship – and the violations of § 38-306 and 5A DCMR § 5008.6 – to end. Beyond Ellington's disparate treatment is the bottom line: In no way, shape or form can OSSE's handling of this matter possibly be described as involving "methods … crafted to facilitate, rather than hinder, the school enrollment of eligible students." Clear violations of D.C. Code § 38-306 and 5A DCMR § 5008.6 are evident, and remain *ongoing*, incapable of resolution without intervention from this Court. Allowing OSSE to simply reissue another round of Notice letters, and for Ellington's parents to then have to file appeals before knowing OSSE's allegations or being given any opportunity to address them, runs counter to these statutory and regulatory mandates. Contrary to the May 2018 OSSE Report's remarkable suggestion, due process is not a principle that begins *only after* OSSE's involvement ends.

[4] Another example of this was Ellington's ability to respond to OSSE's 2017-18 preliminary residency audit results. In the past, on information and belief, Ellington had been given a week to supplement paperwork on students flagged in audits as potential non-residents (usually only a handful of students). This year, Ellington was initially told by OSSE in January that a far larger number (74) were flagged, *and that the school would be given only 24 hours* to submit all its supplemental documentation, electronically into a portal. OSSE then told Ellington it *would not even say what date the portal would open* – meaning that Ellington's 24 hours in fact might become only 16 hours if the portal opened at midnight and Ellington first learned it was open at 8AM. Ellington had to reassign staff in order to complete the uploading of all paperwork in time. To state the obvious, this was not a method "crafted to facilitate rather than hinder school enrollment of eligible students."

69. ***The cardinal sin*** in residency reviews is when an actual DC resident is deemed a non-DC resident. That student essentially is ***rendered stateless*** – the student can no longer attend a DC school, and cannot attend any other system's schools either (because s/he is actually a DC resident). That should never, ever happen – as § 38-306 makes clear. Accordingly, this Court should now grant injunctive relief to ensure that this statutory mandate is effectuated, and that 5A DCMR § 5008.6's mandate is followed.

70. The reality is this: Within the past month, at least 164 (and up to 220) Ellington families received Notice letters from OSSE, declaring them to be non-residents. Most had no warning at all they were even under investigation, and were never contacted before OSSE suddenly labeled them fraudsters, referred them to the OAG, and threatened their students with school ineligibility and the families with draconian penalties. When Ellington families tried to find out why this was so, OSSE then provided nothing more than boilerplate drivel, giving no real clue as to why its Notice letters (*often sent to the Ellington families' D.C. addresses*) were declaring them to be *non*-DC residents. It is a situation intolerable in a civilized society, and one that should not be allowed to continue.

WHEREFORE, this Court should issue a Temporary Restraining Order, as well as preliminary and permanent injunctive relief, restraining OSSE from committing any further violations of D.C. Code § 38-306, and in particular restraining OSSE from issuing any new Notice letters until OSSE first puts into place methods to determine residency status that are "crafted to facilitate rather than hinder school enrollment of eligible students," as D.C. Code § 38-306's requires, and as approved in advance by this Court. OSSE should also be restrained from any further violations of 5A DCMR § 5008.6.

PRAYER FOR RELIEF

Plaintiffs respectfully pray that this Court enter judgment on behalf of Plaintiffs and against Defendant, and order relief against the Defendant as follows:

A. This Court should enter a Declaratory Judgment finding that all of OSSE's Notice letters issued against Plaintiffs, declaring Ellington students to be non-DC residents without OSSE describing its basis therefor, and improperly advising Plaintiffs of their appellate deadlines and procedures, were issued in violation of codified law and in violation of Plaintiffs' recognized due process rights, and must therefore be treated as null and void;

B. This Court should issue a temporary restraining order, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs, restraining OSSE from arguing or taking any position that its current Notice letters may be treated as a final action of the agency because of any Plaintiff's failure to appeal the current Notice letters within 10 business days of their issuance;

C. This Court should enter a temporary restraining order, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs, restraining OSSE from committing any further violations of D.C. Code § 38-306, and in particular restraining OSSE from issuing any new Notice letters until OSSE first puts into place new methods used to determine residency status that are "crafted to facilitate rather than hinder school enrollment of eligible students," as D.C. Code § 38-306's requires, as approved in advance by this Court;

D. This Court should enter a temporary restraining order, as well as preliminary and permanent injunctive relief, in favor of the Plaintiffs, restraining OSSE

from denying to these Ellington families its investigation results requested under 5A DCMR § 5008.6; and

E. This Court should impose on the Defendant all costs of this action, plus statutory attorney's fees pursuant to 42 U.S.C. § 1988 if warranted, and such other and further relief as the Court may deem just and appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury as to all issues so triable.

Respectfully Submitted,

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