

# CENTER FOR LAW AND EDUCATION

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Samantha L. Deshommes, Chief  
Regulatory Coordination Division  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
200 Massachusetts Avenue NW Washington, D.C.20529-2140

## **Re: DHS Docket No. USCIS 2010-0012; RIN 1615-AA22 Inadmissibility on Public Charge Grounds**

Division Chief Deshommes,

The Center for Law and Education (“CLE”) is a national legal advocacy organization whose mission is to make every student’s right to a high-quality education a reality. From its Boston office, CLE provides back of legal assistance and support to legal services offices representing students in education matters. As a voice for the rights of students, in particular those from low-income families, to a high-quality education, we strongly oppose the regulatory proposal “Inadmissibility on Public Charge Grounds” released by the Department of Homeland Security. The harm to children and youth’s physical and mental health, and educational outcomes, is foreseeable.

The “Public Charge” rule would jeopardize the ability of students in immigrant families, both legal and those without documents, to succeed in school. For students to be successful in school, they must be safe, healthy, well-fed, and stably housed.<sup>1</sup> The Proposed Rule would expand the list of benefits that US immigration officials review when deciding whether to grant an immigrant a green card or an extension or change of temporary status. For example, in applications for long term residency, in addition to cash benefits such as SSI and Temporary Assistance for Needy Families (TANF), officials would consider an immigrant’s use of public programs that address basic needs as a “heavily weighted negative factor” (e.g., Medicaid, except for some emergency and school-based benefit programs; the Supplemental Nutrition Assistance Program (SNAP); Section 8 housing assistance, and other publicly subsidized housing). If implemented as proposed, the expanded public charge rule would force immigrant families either to decline the food, housing, and health benefits their children need to thrive or put their long-term immigration status in jeopardy.

The proposed regulation will negatively impact several key indicators of child well-being that the U.S. Government Accountability Office has selected as critical to enabling children to “become responsible and productive adults,” including but not limited to: food insecurity; access to insurance and medical care; student and family homelessness; and high graduation rates.<sup>2</sup> In particular, if the proposed regulation is finalized:

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<sup>1</sup> “Stresses of Poverty May Impair Learning Ability in Young Children,” National Institutes of Health, 2012.

<sup>2</sup> “Child Well-Being: Key Considerations for Policymakers,” GAO-18-41SP, November 2017.

1. More students will arrive to school hungry and schools will have difficulty maintaining their school-wide lunch programs;
2. Fewer students will have access to critical healthcare services, including mental health services, both in and out of school;
3. More students will experience the trauma of homelessness; and
4. Toxic stress among children will lead to long-term developmental consequences.

As nearly 20 million children, or more than 25 percent of children in the U.S., live with at least one immigrant parent,<sup>3</sup> this proposed rule change would adversely affect the development, learning, and achievement of a significant proportion of the nation's youth population.<sup>4</sup> The deleterious impact will be especially tangible for low-income children, as 31 percent of our nation's low-income children aged birth to seventeen are children of immigrants<sup>5</sup> and, nationwide, approximately 9.6 million children have immigrant parents with incomes below 200 percent of the federal poverty level.<sup>6</sup>

Immigrant children and children of immigrants already face significant challenges in accessing the benefits of a public education (e.g., heightened levels of poverty, trauma, fear, social and emotional stress related to family separation, their own or their family members' documentation status, limited literacy or struggle to attain English language proficiency).<sup>7</sup> Despite these challenges, children in immigrant families, including ELs who complete high school, are more likely to enroll in college, be employed or in school, and are less likely to have a criminal record or to have a child as a young adult compared to peers from nonimmigrant families.<sup>8</sup> Nevertheless, to succeed, many of these children may require targeted native language support, intervention strategies from qualified educators, and wrap around services targeted to their economic, health, and housing needs and those of their families. The proposed rule would exacerbate the barriers these students face to become college and career ready.

**1. If the proposed regulation is finalized, more students will arrive to school hungry and schools will have difficulty maintaining their schoolwide lunch programs**

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<sup>3</sup> Ninety-six percent of young children of immigrants are U.S. citizens. Park et. al., "Immigrant and Refugee Workers in the Early Childhood Field: Taking a Closer Look," Migration Policy Institute, April 2015. This means that an overwhelming majority of young children of immigrants live in "mixed-status households," where at least one parent, and potentially other family members, are lawful permanent residents, legal residents, or undocumented. Lee et. al., "Two Generational Strategies to Improve Immigrant Family and Child Outcomes," CLASP, March 2015. In Massachusetts, where one in six residents is foreign-born, 28.5% of children have at least one immigrant parent and 80% of children of immigrants are U.S. citizens through birth. "Immigrants are our Commonwealth," Massachusetts Immigrant and Refugee Advocacy Coalition Factsheet, updated April 2, 2018.

<sup>4</sup> Samantha Artiga and Anthony Damico, "Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies," Kaiser Family Foundation, April 18, 2018. Young children of immigrants, birth to five-years-old, make up over one-fifth of the child population in twenty-two states. Lee et. al., "Two Generational Strategies to Improve Immigrant Family and Child Outcomes," CLASP, March 2015. The number of young children of immigrants doubled between 1990 and 2013, from 2.9 million to 5.8 million (ibid).

<sup>5</sup> Lee et. al., "Two Generational Strategies to Improve Immigrant Family and Child Outcomes," CLASP, March 2015.

<sup>6</sup> Jiang, Ekono, and Skinner, "Basic Facts About Low-Income Children," National Center for Children in Poverty, February 2016.

<sup>7</sup> In fall 2015, ELs comprised 9.5 percent, or 4.8 million public school students in the United States; this reflected a significant increase over those counted in fall 2000 (8.1 percent, or 3.8 million students). In fall 2015, ELs comprised more than 10 percent of the public school enrollment in eight states, namely Alaska, California, Colorado, Kansas, Nevada, New Mexico, Texas, and Washington. California identified the highest percentage of ELs (21 percent) among its public school students followed by Texas and Nevada at 16.8 percent. The number of ELs in public schools was higher in fall 2015 than in fall 2010 in 36 states and the District of Columbia, with the largest increase occurring in Massachusetts (3.0 percentage points). "English Language Learners in Public Schools," National Center for Education Statistics, April 2018, accessed at [https://nces.ed.gov/programs/coe/indicator\\_cgf.asp](https://nces.ed.gov/programs/coe/indicator_cgf.asp).

<sup>8</sup> Sandra L. Hofferth and Ui Jeong Moon, "How Do They Do It? The Immigrant Paradox in the Transition to Adulthood," Social Science Research Vol. 57, May 2016.

The proposed rule will likely lead to reduced participation in SNAP. SNAP predominantly serves families with children, and twenty percent of participating children live in a household with at least one non-citizen.<sup>9</sup> The benefits of SNAP are numerous for children: in 2012, SNAP lifted 2.1 children out of deep poverty and kept 4.9 million children out of poverty altogether.<sup>10</sup> SNAP reduces child food insecurity by a third and provides children with a critical food source during summer months when free and reduced school lunches are not available.<sup>11</sup> SNAP has also been shown to improve child health; children receiving SNAP are less likely to be in poor or fair health or underweight, and “their families are less likely to make tradeoffs between paying for health care and paying for other basic needs, like food, housing, heating, and electricity.”<sup>12</sup> Serious consequences result when children lose some or all of their SNAP benefits – such children “are more likely to have poor health, be food insecure, forgo medical care, or make health care tradeoffs than families who consistently receive SNAP benefits.”<sup>13</sup>

The health benefits conferred by childhood participation in SNAP have translated to demonstrated success in school. Access to regular, stable meals is essential for developing memory and social and emotional skills which are crucial to school success.<sup>14</sup> Furthermore, SNAP participation has been shown to improve reading and math skills in elementary school children, especially young girls.<sup>15</sup> One study has shown that SNAP led to a sixteen percent increase in high school graduation rate compared to non-SNAP participants, and a simultaneous reduction in childhood obesity, heart disease, and stunted growth.<sup>16</sup> Childhood SNAP participants, including immigrant children, are *less likely* to rely on SNAP or TANF in adulthood, and are therefore more likely to be economically self-sufficient as adults.<sup>17</sup> SNAP is a vital resource for ensuring that our neediest children are on a path to educational attainment and self-sufficiency. Since immigrant children who participate in SNAP are less likely to depend upon government resources as adults, such participation should be seen as an important investment in their futures, not a penalizing factor against them.

A reduction in families participating in SNAP may also have larger consequences for the federal school lunch program. Currently, direct certification of student eligibility for free lunch through SNAP participation forms the foundation of the Community Eligibility Provision (CEP) of the school lunch program. Over 20,000 high poverty schools offer schoolwide free breakfast and lunch through CEP. This allows schools to combat childhood hunger, which in turn boosts attendance and academic achievement, while reducing discipline referrals. Community eligible schools qualify for this provision by having a minimum of 40 percent of their students certified to receive free meals without submitting an application; much of this certification occurs through SNAP participation. The proposed rule change will lead to fewer children and families using SNAP, including families whose children would not be penalized for using SNAP but who may avoid signing up for the program out of fear and uncertainty. In turn, this will reduce the number of students who are directly identified for free lunch under the CEP. Schools may no longer be able to provide full school-wide free breakfast and lunch to their high poverty students based on decreased enrollment in SNAP. If schools lose their CEP eligibility, they must depend on parents turning in paperwork to certify their income levels. This process is not only burdensome for the school, it is also difficult to get families to complete the forms — especially in a climate of fear around filling out any government paperwork. We are aware of families who are too scared to fill out lunch eligibility forms,

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<sup>9</sup> Carlson et. al., “SNAP Works for America’s Children,” Center on Budget and Policy Priorities, Sept. 29, 2016

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> Hoynes et. al., “Long-Run Impacts of Childhood Access to the Safety Net,” *American Economic Review*, April 2016.

<sup>17</sup> *ibid.*

even though the federal school lunch program is not currently included in the proposed regulation. If schools lose CEP eligibility, they will have to struggle to get families to complete paper applications or risk losing funding for their free breakfast and lunch programs, even though the number of poor, hungry students in their schools remains the same. This places an unreasonable burden on schools, who should be focused on educating the students within their walls.

## **2. Fewer students will have access to critical healthcare services both in and out of school**

Furthermore, the inclusion of Medicaid in the proposed rule will likely have a chilling effect on individuals in immigrant families, including citizen children. Currently, Medicaid/CHIP provides coverage to over 8 million citizen children with an immigrant parent.<sup>18</sup> Parents whose children are not directly affected by the proposed rule may choose to disenroll both themselves and their children from Medicaid because they fear even their citizen children's enrollment will have an adverse effect on their family's immigration status.<sup>19</sup> The Kaiser Family Foundation estimates that "between 2.1 million and 4.9 million Medicaid/CHIP enrollees living in a family with at least one noncitizen would disenroll" despite remaining eligible, "due to chilling effects among enrollees in immigrant families, including their primary citizen children."<sup>20</sup> This reduced access to healthcare for children will lead to worse health outcomes, which will be compounded by nutrition concerns caused by reduced enrollment in SNAP.

Access to Medicaid/CHIP in early childhood, as well as for fetal care, has been shown to increase educational attainment and decrease dropout rates.<sup>21</sup> There is a strong link between access to childhood Medicaid and improved health and economic well-being in adulthood (Hoynes, Hilary W. and Diane Whitmore Schanzenbach, "Safety Net Investments in Children," Brookings Papers on Economic Activity, Spring 2018). Medicaid access during childhood improves chances of college completion and adult employment.<sup>22</sup> Thus, as with SNAP, Medicaid/CHIP is a crucial investment in immigrant children that helps them on a path to self-sufficiency in adulthood. Participation in such programs should be encouraged, not seen as a warning sign for future government dependence.

Students who don't have access to stable health care are more likely to be chronically absent from school. For example, nearly 10 percent of children aged four to fourteen are diagnosed with asthma, which accounts for 14 million absences each school year; children with more serious asthma are over three times more likely than their peers to miss ten or more days of school. Tooth decay, the most chronic disease among children, leads to almost two million school absences a year.<sup>23</sup> Without Medicaid/CHIP, students will not be able to access the healthcare they need and will miss even more school. The effects of chronic absenteeism on school success are serious. Students who are chronically absent in their early years of education are much less likely to read on grade level by third grade; students who aren't reading on grade level by third grade are three times more likely to eventually drop out of high school ("Students with Disabilities and Chronic Absenteeism," National Center on Educational Outcomes Brief Number 15, April 2018). In high school, chronic absenteeism is a better indicator for dropout rates than achievement on test scores.<sup>24</sup>

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<sup>18</sup> Samantha Artiga and Anthony Damico, "Nearly 20 Million Children Live in Immigrant Families that Could Be Affected by Evolving Immigration Policies," Kaiser Family Foundation, April 18, 2018.

<sup>19</sup> Samantha Artiga, Rachel Garfield, and Anthony Damico, "Estimated Impacts of the Proposed Public Charge Rule on Immigrants and Medicaid," Kaiser Family Foundation, October 2018.

<sup>20</sup> *ibid.*

<sup>21</sup> Cohodes et. al., "The Effect of Child Health Insurance Access on Schooling: Evidence from Public Insurance Expansions," National Bureau of Economic Research, 2014.

<sup>22</sup> *ibid.*

<sup>23</sup> "Mapping the Early Attendance Gap: Charting a Course for School Success," Attendance Works, September 2015.

<sup>24</sup> *ibid.*

Furthermore, a decrease in Medicaid/CHIP enrollment can affect funding for school-based health centers, at least 72 percent of which bill Medicaid/CHIP for services provided to students who are enrolled in Medicaid/CHIP.<sup>25</sup> If student enrollment in these programs goes down, so does the available revenue for these school-based programs. Thus, students who are disenrolled in Medicaid/CHIP due to this proposed rule may lose access to regular health care both in and out of school. As our partner organization Massachusetts Advocates for Children has explained in their public comments, the proposed rule may have an especially harsh impact on students with disabilities who depend on Medicaid support for their developmental success.

### **3. More students will experience the trauma of homelessness**

Including Section 8 vouchers and public housing programs in the proposed rule would have disastrous effects on students who currently benefit from this program. This would lead to an increase in students who are homeless or have an unstable housing situation. Families who lose subsidized housing support may be forced into crowded or poor housing conditions and may move frequently in search of stable housing, all of which are factors associated with reduced educational performance.<sup>26</sup> Children who experience homelessness or residential instability are more likely to have “weaker vocabulary skills, problem behaviors, grade retention, high school drop-out rates, and lower adult educational attainment” than peers who have stable housing.<sup>27</sup> Children who are homeless are four times more likely to have developmental delays that impede academic success and are diagnosed with learning disabilities at twice the rate of their peers.<sup>28</sup> Homeless youth also have greatly increased incidences of mental and emotional disabilities, which leads to difficulty succeeding in school.<sup>29</sup> Homeless children are also at a much greater risk of chronic absenteeism, which leads these children to be held back at much higher rates than their peers.<sup>30</sup>

### **4. Toxic stress among children will lead to long-term developmental consequences**

The proposed rule is contributing to a broader climate of fear and uncertainty among immigrant children and families. Parents and pediatricians have noticed that fear among children, including citizen children and children with lawfully residing parents, is creating toxic stress that manifests in a variety of ways, including behavioral symptoms such as “problems sleeping and eating, regression, increased restlessness and agitation, and withdrawal from family and friends,” psychosomatic symptoms including “headaches, stomach aches, nausea, and vomiting,” and mental health symptoms such as “anxiety, having panic attacks, displaying symptoms of depression, and/or expressing an overall loss of hope for the future.”<sup>31</sup> Doctors have noted that students are having difficulty paying attention in school “because of their stress and worries about potentially losing their parents,” and they are showing heightened signs of attention issues that may stem from fear and anxiety about their parents potentially being deported.<sup>32</sup> There are significant concerns that the toxic stress experienced by children in the current climate will have long-term consequences. According to the Kaiser Family Foundation, “Children living with the constant

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<sup>25</sup> “School based health Centers: Available Information on Federal Funding, GAO-11-18R, 2010

<sup>26</sup> Elizabeth J. Mueller and J. Rosie Tighe, “Making the Case for Affordable Housing: Connecting Housing with Health and Education Outcomes,” *Journal of Planning Literature* Vol. 21 No.4, May 2007.

<sup>27</sup> Heather Sandstrom and Sandra Huerta, “The Negative Effects of Instability on Child Development: A Research Synthesis,” Urban Institute, September 2013.

<sup>28</sup> Molnar, JM; et al. “Constantly compromised: the impact of homelessness on children,” *Journal of Social Issues* 46(4): 109-124, 1990.

<sup>29</sup> Elizabeth J. Mueller and J. Rosie Tighe, “Making the Case for Affordable Housing: Connecting Housing with Health and Education Outcomes,” *Journal of Planning Literature* Vol. 21 No.4, May 2007.

<sup>30</sup> Sandel, Megan; et al. “There’s No Place Like Home.” *Housing America*, 1999.

<sup>31</sup> Samantha Artiga and Petry Ugbi, “Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health,” Kaiser Family Foundation, December 2017.

<sup>32</sup> *ibid.*

threat of their parents' deportation may have a constant and heightened state of anxiety that does not allow their body to return to baseline functioning...the stress of living in fear of deportation among immigrant children could disrupt a child's developmental processes and lead to long-term health concerns."<sup>33</sup>

Family separation is one of the biggest risks to a child's emotional and physical wellbeing — fear of separation, combined with other stressors such as lack of food security, stable housing, and health insurance, can do immense damage to a child's development, leading to “physical and mental health problems that last into adulthood.”<sup>34</sup> This proposed regulation may have devastating, life-long consequences on the emotional well-being of an entire generation of immigrant children.

## **Conclusion**

We oppose this cruel and needless attack on poor children and youth in immigrant families. The long-term effects of the proposed regulation would impede their ability to attain an education and thrive as both citizens and as independent productive members of society. For the above reasons, we urge you to reject the proposed rule *in toto*.

Thank you for your consideration of these comments.

Sincerely,

Stephanie Horwitz, Legal Intern

Kathleen B. Boundy, Co-Director

Center for Law and Education

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<sup>33</sup> *ibid.*

<sup>34</sup> Cervantes et. al., “Our Children’s Fear: Immigration Policy’s Effect on Young Children,” CLASP, March 2018.