

**TO:** Senator Shelley B. Mayer, Chair and Distinguished Members of the New York Senate Committee on Education

**FROM:** Marci A. Hamilton, Founder & Academic Director, CHILD USA; Professor in the Fels Institute of Government, University of Pennsylvania

**RE:** S6423, proposed changes to New York’s substantial equivalency law

**DATE:** October 7, 2021

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Dear Chair Mayer and Distinguished Members of the Committee on Education,

Thank you for allowing me, Professor Marci Hamilton, to submit this memo in support of S6423, which reaffirms New York’s substantial equivalency law, defines substantial equivalency, and conditions the receipt of state funds on compliance with New York’s Education Laws.

By way of introduction, I am the Founder and CEO of CHILD USA, the leading nonprofit interdisciplinary think tank dedicated to the prevention of child abuse and neglect. CHILD USA pairs high-level legal analysis with cutting edge social science to reach the best policies to end child abuse and neglect. I am also a Professor in the Fels Institute of Government at the University of Pennsylvania. CHILD USA calls on the New York General Assembly to pass the proposed regulations on substantial equivalency to ensure the right of every child in New York to a basic education will be protected, regardless of the type of school they attend.

**I. The Failure to Provide Children with An Adequate Education Generates Significant Costs Both for The Child and Society**

Education is a fundamental human right enshrined in international law and a right that the United States Supreme Court has consistently recognized as occupying an important role in preparing individuals for participation as citizens.<sup>1</sup> The Court has repeatedly recognized the paramount importance of a sound basic education, which the Court has stressed is “a most vital

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<sup>1</sup> See, e.g., The Universal Declaration of Human Rights, United Nations, (Paris, 10 December 1948) available at <http://www.un.org/en/universal-declaration-human-rights/>; Right to Education, United Nations Educational, Scientific and Cultural Organization, available at <http://en.unesco.org/worldeducation-forum-2015/5-key-themes/right-education>; see also, Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).



civic institution for the preservation of a democratic system of government,” Abington Sch. Dist. v. Schempp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring), and a “bulwark of a free people against tyranny.” Wisconsin v. Yoder, 406 U.S. 205, 225 (1972). To that end, the New York State Constitution explicitly grants all children, regardless of where they attend school, the right to obtain a basic education which requires, at a minimum, “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants” in our democratic society. Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 905 (2003); see also, NY CONST. ART. XI, § 1.



It follows that educational neglect comes at a great cost to society. When children are denied the opportunity to learn basic literacy skills, the adverse effects radiate throughout the community. Low levels of literacy cost the U.S. an estimated \$225 billion in workforce productivity losses, crime, and loss of tax revenue due to unemployment.<sup>2</sup> Additionally, low literacy adds an estimated \$106 to \$238 billion to the annual cost of delivering healthcare.<sup>3</sup> This educational neglect also leads to a community incapable of supporting itself and in need of extraordinary government welfare supports.<sup>4</sup> Basic literacy skills are undoubtedly the foundation for meaningful participation in America’s democracy and economy. The United States Supreme Court has repeatedly recognized as much, stressing the “significant social costs borne by our Nation” when children suffer the “stigma of illiteracy”—and are thereby denied “the basic tools by which [to] lead economically productive lives to the benefit of us all.” Plyler v. Doe, 457 U.S. 202, 221-23 (1982).

Basic literacy skills are the key to accessing all human rights and a virtual prerequisite to effective participation in other civic endeavors. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 482-83 (1965) (“The right of freedom of speech and press includes . . . the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach . . . Without those peripheral rights the specific

<sup>2</sup>See *U.S. Adult Literacy Facts*, PROLITERACY.ORG, available at [https://www.proliteracy.org/Portals/0/pdf/PL\\_AdultLitFacts\\_US\\_flyer.pdf](https://www.proliteracy.org/Portals/0/pdf/PL_AdultLitFacts_US_flyer.pdf)

<sup>3</sup> *Id.*

<sup>4</sup>See *Literacy Statistics*, BEGINTOREAD.COM, available at <https://www.begintoread.com/research/literacystatistics.html>

rights would be less secure.”). The acquisition of these skills is more important than ever as society’s technological and information-based economy calls for a higher level of education. Without sufficient secular education, the opportunity to forge a path toward greater self-sufficiency will remain out of reach for many.

## **II. Educational Neglect Remains a Significant Problem in Socially Isolated and Ultra-Religious Communities**

Educational neglect is a national problem affecting organizations and religions of every denomination. Every state establishes its own educational standards but to date few have succeeded in enforcing the educational equivalency that is required to ensure children beyond the public school system are adequately educated. Socially isolated communities, however, present particular challenges in this arena, as does homeschooling.

When the United States Supreme Court in Wisconsin v. Yoder held that the Amish could avoid compulsory education laws and remove their children from school after the 8<sup>th</sup> grade, it opened the door for isolated religious groups to under educate their children. 406 U.S. 205 at 213. For example, the Fundamentalist Church of Christ of Latter-day Saints (FLDS) has a storied history of educational neglect. In 2000, the FLDS community in Southern Utah withdrew all of its children from the public school system and placed them in private church-based schools in an effort to evade media and government scrutiny triggered by the search and arrest of FLDS leader Warren Jeffs.<sup>5</sup> After Jeffs’ arrest, and with the elimination of these church-based schools, many children reentered the public school system but only half were on grade level.<sup>6</sup>

Similarly, most states lack basic safeguards and regulations to ensure that children who are homeschooled are receiving an adequate education. The failure to provide meaningful oversight for homeschooling has created a channel by which those children who experience chronic truancy or abuse can evade suspicions that might otherwise be aroused in a traditional public or private school setting.<sup>7</sup> Children who later seek to reintegrate into mainstream schooling or society may find themselves significantly behind their peers not only in terms of education but also in their capacity for self-protection and care. Thus, the continued lack of regulation and enforcement in most states has left many children at risk of educational neglect and its attendant consequences.

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<sup>5</sup> Oliver Yates Libaw, *Polygamous Sect Pulls Children from Schools*, ABCNEWS.COM (Jan. 2006), available at <https://abcnews.go.com/US/story?id=95765&page=1ct>

<sup>6</sup> Polygamous groups generally have struggled with educational achievement. In a study conducted at Seton Hall University, *The Negative Impact of Polygamy on Women and Children in Mormon and Islamic Cultures*, it was found that children in polygamous families tended to score lower on examinations, have a lower understanding of academic subjects, and poor school achievement, particularly when it came to Math and English.

<sup>7</sup> See, e.g., Barbara L. Knox, et. al., *Child Torture as a Form of Child Abuse*, 7(1) J. OF CHILD ADOL. TRAUMA 37 (2014), available at <https://www.rimaregas.com/wp-content/uploads/2018/01/Knox-Torture-as-a-Form-of-Child-Abuse-article.pdf> (finding that 47% of victims of severe child abuse were removed from school to be homeschooled); see also, Legislative Research Commission, Office of Education Accountability, *Report: Homeschooling in Kentucky* (Sep. 2018), available at <https://apps.legislature.ky.gov/lrc/publications/ResearchReports/RR454.pdf> (finding 2/3 of children removed from school to be homeschooled were previously chronically truant from school).

### III. Conclusion

CHILD USA believes children have a fundamental right to receive a quality education. Therefore, we support reasonable educational regulations, like those in S6423, that would ensure that all of New York's school children receive the education they are entitled to under international, federal, and state law regardless of the type of school they attend. For the sake of New York's children and families, and in the interest of the fundamental right to education, the State cannot continue to ignore this problem.

Please do not hesitate to contact me with questions regarding these issues and/or any other child protection issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Marci A. Hamilton", with a long horizontal flourish extending to the right.

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