

## *ACLU of California Model Sanctuary School Board Policy*

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### **Guiding Principles**

Immigration enforcement activities in and around schools create hardships and barriers to health and educational attainment for immigrant students, and establish a pervasive climate of fear, conflict, and stress that affects all District students, regardless of their background or immigration status.<sup>1</sup> The federal government has recognized the human cost associated with immigration enforcement on campus and declared that schools are “sensitive locations” at which immigration enforcement activity should not occur. Accordingly, federal immigration enforcement activities in and around District property<sup>2</sup> would be a severe disruption to the learning environment and educational setting for students.

The District is committed to providing a safe, welcoming, and inclusive learning environment for immigrant students and their families. The District is also committed to protecting the rights of immigrant students and their families through policies that prohibit information-sharing with local law enforcement and federal immigration authorities<sup>3</sup> to the fullest extent possible under the law.

The District shall not adopt or implement policies, practices, or procedures that exclude students from school based on their or their parents’ or guardians’ actual or perceived immigration status. Furthermore, District personnel shall treat all students equitably in the receipt of all school services, including, but not limited to, the free and reduced meal program, transportation, and educational instruction.

The specific provisions of this policy, which limit the District’s participation in immigration enforcement to the maximum extent permitted by law, are necessary to fulfill the District’s obligation to provide all students, regardless of their immigration status, equal access to education.

### **Prohibition Against Immigration Enforcement Activities by District or On-Campus**

In addition to establishing a climate of fear, conflict, and stress, when campus police and other district staff<sup>4</sup> are involved in enforcing federal civil immigration law, it 1) creates the perception that they are exercising federal immigration enforcement authority; 2) decreases the likelihood that students will cooperate with campus police and officials based on fears that this could lead to their deportation or the deportation of family members; and 3) conflicts with the District’s constitutional obligation to provide equal educational opportunities to students regardless of their immigration status.

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<sup>1</sup> “Citizenship or immigration status” refers to all matters regarding citizenship, the authority to reside in or otherwise be present in the United States, the time or manner of a person’s entry into the United States, or any other civil immigration matter enforced by the Department of Homeland Security (“DHS”) or other federal agency charged with the enforcement of civil immigration law.

<sup>2</sup> District property includes, but is not limited to, all school sites, early education centers, adult school facilities, and District administrative offices.

<sup>3</sup> “Federal immigration authorities” means any officer, employee, or person otherwise paid by or acting as an agent of United States Immigration and Customs Enforcement (“ICE”) or any division thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security (“DHS”) who is charged with the enforcement of civil immigration law.

<sup>4</sup> “District staff and personnel” includes all persons employed by the District, including District administrative staff, school personnel, and school security personnel and police officers.

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The District shall not enter into agreements with state or local law enforcement agencies, or any federal agency, to conduct or support immigration enforcement activities.

Campus police shall adopt a policy acknowledging that they have no authority to enforce federal immigration law and declaring that they will not participate in immigration enforcement efforts with federal authorities. This means that law enforcement officers stationed at District schools shall not: hold individuals in custody on ICE detainers,<sup>5</sup> respond to ICE notification or transfer requests,<sup>6</sup> make arrests based on civil immigration warrants,<sup>7</sup> or allow ICE to use campus facilities for immigration enforcement purposes.

### *Immigration Authorities' Access to School Site or Request to Interview a Student*

In accordance with these principles and general District policies restricting visitor access to school sites for school-related purposes only, the District shall deny all requests by federal immigration authorities for access to a school site or to interview a student. Given the particular threat immigration enforcement poses to the learning environment, these requests shall be immediately forwarded to the District Superintendent and District General Counsel for review and a decision on whether to reverse the denial and allow access to the site or the student, and/or a decision on whether such access will conflict with District compliance with the legal principles articulated in *Plyler v. Doe* and other applicable laws.

When federal immigration enforcement agents request access to a school site or to interview a student, the Superintendent and/or General Counsel shall ask for the agents' credentials, ask why the agents are requesting access, and ask to see a warrant signed by a federal or state judge. Federal immigration enforcement agents must provide to the Superintendent and/or General Counsel written authorization from ICE instructing them to enter District property, including the purpose of such entry, as well as a warrant signed by a federal or state judge which specifies the name of the person under arrest or area to be searched. If the federal immigration enforcement agents are not able to provide such written authority and warrant, the Superintendent and/or General Counsel shall prohibit their access to District property.

If the federal immigration enforcement agents satisfy the above criteria, the school site principal or his/her designee shall oversee the agents' investigation. Such oversight includes prohibiting access to information, records, and areas beyond that specified in the warrant. For student interviews, a private location out of sight and hearing of other students should be arranged, where practicable, that will help avoid invading the student's privacy, jeopardizing the safety and welfare of other students, and further disruption of the school campus. The principal or designee shall discourage federal immigration enforcement agents from interviewing or escorting students through school hallways in view of

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<sup>5</sup> "Detainer" or "hold request" means a federal ICE request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, DHS Form I-247D.

<sup>6</sup> "Notification request" means an ICE request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N. "Transfer request" means an ICE request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X.

<sup>7</sup> "Civil immigration warrant," also known as an administrative removal warrant, means any warrant for arrest for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

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students. The District expects that federal immigration enforcement agents will provide the principal or designee the opportunity to be present during any interview of a student.

### *Access to Student Records*

In addition to the standards set forth in the paragraphs below regarding student informational privacy, the District shall refuse all informal requests by federal immigration authorities for voluntary access to student records, including requests to access student directory information and information that may be disclosed to law enforcement under the Family Education Rights and Privacy Act (“FERPA”), across all aspects of the District and to the fullest extent possible under the law.<sup>8</sup> If presented with an ICE Administrative Subpoena<sup>9</sup> for records, the District shall forward the subpoena to the Superintendent and General Counsel, who will in turn inform the federal immigration authorities of the District’s general policy against sharing student records. In the event the federal immigration authorities seek to enforce the subpoena in court, the District will oppose that motion and may appeal a court order enforcing the subpoena. The District will comply with any final court order enforcing an Administrative Subpoena issued to federal immigration authorities.

When required by judicial warrant<sup>10</sup> or other court order to provide federal immigration authorities’ access to a student’s records, the school site principal or his/her designee shall oversee the federal immigration enforcement agents’ investigation. Such oversight includes guaranteeing that the federal immigration enforcement agents access only the information specified in the warrant or judicial order.

### *Immigration Authority’s Request to Take Custody of a Student*

Absent a judicial warrant or other court order, federal immigration enforcement agents will not be permitted access to the school site, students, or student records. The District and its staff, faculty, employees, and campus police will not honor any ICE detainers or requests to obtain custody of a student.

Federal immigration authorities may take custody of a student only if they present a judicial warrant or court order that satisfies the criteria described above in the above section, “Immigration Authorities’ Access to School Site or Request to Interview a Student.” Federal immigration authorities cannot circumvent the protections afforded students under the law and this Policy by seeking assistance from, or participating in enforcement activities with, local law enforcement.

In the event a student’s parent or guardian has been arrested by federal immigration authorities, the District shall use the student’s emergency card contact information and release the student to the person(s) designated as emergency contacts by the student’s guardian. Alternatively, the District will release the student into the custody of any individual who presents a Caregiver’s Authorization

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<sup>8</sup> FERPA authorizes, but does not require, the District’s voluntarily disclosure of student directory information. The District will refuse any informal request for voluntary disclosure of student directory information.

<sup>9</sup> “ICE Administrative Subpoena” is a subpoena to require the testimony of witnesses or production of records.

<sup>10</sup> “Judicial warrant” means a warrant based on probable cause and issued by a state federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant.

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Affidavit<sup>11</sup> on behalf of the child. In the event there is no emergency contact listed or the emergency contact(s) are not able to take custody of the child, and no person with a Caregiver's Authorization Affidavit presents themselves on behalf the child within 12 hours, the District will release the student to County Child Protective Services.

### **Student Informational Privacy**

#### *Prohibition Against District Inquiries Relating to Students' and Families' Personal Information*

District staff shall not require or request information that relates to students' or their families' immigration status, including requests for a social security number, passport, a birth certificate, or other citizenship-related documents. District personnel shall not inquire into a student's or a family member's immigration status.

#### *Prohibition Against District Data Collection and Distribution of Information Relating to Students' or Their Families' Immigration Status*

District personnel who learn of information related to a student's or their family member's actual or perceived immigration status must keep that information confidential and therefore shall not record or distribute that information.

Pursuant to the Family Education Rights and Privacy Act ("FERPA"), District personnel shall not disclose personally identifying information found in a student's education records without parental consent authorizing, or a judicial order mandating, the disclosure. Prohibited information-sharing under this policy includes, but is not limited to, disclosing information in a student's cumulative file relating to the student or their family member's immigration status.

District personnel shall follow this policy and not disclose, without parental consent, a student's immigration status, country of birth, or other personally identifiable information.<sup>12</sup>

#### *Prohibition Against Information Sharing with Local Law Enforcement and Federal Immigration Authorities*

District staff shall not initiate communication with federal immigration authorities or local, state, or federal law enforcement regarding a student's or their family member's personal information. Categories of information about a student or family member that may not be shared include:

1. Gender identity;
2. Sexual orientation;
3. Status as a survivor of domestic violence;
4. Survivor of sexual assault;
5. Crime witness;
6. Recipient of public assistance;

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<sup>11</sup> Use of the Caregiver's Authorization Affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

<sup>12</sup> FERPA authorizes, but does not require, the District's voluntary disclosure of student directory information. The District will therefore refuse any informal request for voluntary disclosure of student directory information.

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7. Actual or perceived immigration or citizenship status;
8. National origin;
9. School discipline record; and
10. All information included in an individual's or household's income tax records.

Absent a judicial warrant or other court order, federal immigration authorities and local, state, and federal law enforcement will not be permitted access to student records. Any formal requests for information from federal immigration authorities or local, state, or federal law enforcement shall be forwarded to the District Superintendent for review. Consistent with the standards set forth in the paragraphs above, the District shall forward any judicial warrant, ICE Administrative Subpoena, or other subpoena for student records to the District's General Counsel for review, and shall not respond to any subpoena for records absent a court order enforcing the subpoena.

### *Prohibition Against Information Sharing Between District Law Enforcement Personnel and Certain Local Law Enforcement Agencies*

In order to fulfill its constitutional obligation to provide equal educational opportunity to all students regardless of their immigration status, and consistent with this Policy, the District shall refuse all voluntary information sharing with federal immigration authorities across all aspects of the District to the fullest extent possible under the law. District security officers shall not enter agreements to share student information with local law enforcement or federal immigration authorities.

### *Prohibition Against Agreements for On-Campus Security Services with Local Law Enforcement Agencies with Inadequate Information Sharing Policies*

District shall not employ officers from, or enter into agreements for security services with, external law enforcement agencies that have agreements, policies, or procedures that promote or facilitate information sharing with federal immigration authorities.

District recognizes that policies and procedures authorizing information sharing between law enforcement agencies and federal immigration authorities are not necessarily formal agreements. Information sharing can occur through unofficial agreements, policies, and practices, or unintentionally on shared databases. Accordingly, to prevent disclosure of student information, District will review the information-sharing agreements, policies, and procedures of every local law enforcement agency with which District intends to enter into a formal agreement for security or other services. If District is currently under an agreement with a local law enforcement agency for security services, District will review the local law enforcement agency's information sharing policies, procedures, and agreements for provisions that promote or facilitate information sharing with federal immigration authorities to ensure compliance with this policy to the greatest extent possible.

### Procedures for Identifying and Reviewing Information Sharing Agreements

To determine whether a local law enforcement agency has a problematic information sharing agreement or practice, the District shall consider the following:

- Whether the local law enforcement agency shares information on shared databases;<sup>13</sup>

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<sup>13</sup> Known shared databases and mechanisms include, but are not limited to: CalGangs, Priority Enforcement Program ("PEP"), and Criminal Alien Program ("CAP").

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- Whether the local law enforcement agency communicates with Immigration and Custom Enforcement (“ICE”) in any capacity, including, but not limited to:
  - In response to ICE-initiated contact with local law enforcement agency; or
  - Upon learning of an individual’s immigration status.

If the District employs officers from, or has security agreements with, a law enforcement agency that shares information with any federal immigration authorities, the District shall determine whether the operative agreements with the local law enforcement agency adequately protect students’ personal information. The District must immediately amend or render inoperative agreements, terms, and clauses that:

- Establish no barriers to law enforcement officer access to students’ educational records as defined under the Family Educational Rights and Privacy Act;
- Do not limit the scope of a law enforcement officer’s access to student educational records to information directly relating to the officer’s reason for accessing the record;
- Give law enforcement officers indefinite access to students’ educational records; or
- Fail to ensure compliance with this Policy.

### **Parental Notification**

If any federal immigration authority requests or gains access to a student or their records held by the school or District, District staff must immediately notify the student’s parent or guardian that the federal immigration authority sought access to the student. The District shall remind the parent that they have the right to authorize and send a designee to pick up their child on the parent’s behalf. The District shall allow the child to wait in the office until the parent or his or her designee pick up the student. District personnel who provide parental notice are prohibited from inquiring into the parent or guardian’s immigration status.

Efforts to contact parents by the principal or designee must include calling all numbers listed on the student’s emergency card, including work numbers, cell phone numbers, and all numbers supplied by the student. The principal or designee shall record the time(s) of contact or attempted contact with the parent/guardian.

When notifying the student’s parent or guardian, District staff shall also direct the notified parent to District-approved resources regarding parents’ rights when federal immigration authorities question or detain their children at school. The District-approved resources should be developed by organizations that specialize in immigrants’ rights issues, such as the National Immigration Law Center or the National Immigrant Justice Center.

### **Data Tracking**

The school principal or designee shall document each instance when any federal immigration authority requests access to a school site, student records, or student; each instance when any federal immigration authority interviews a student on school grounds; and each instance when any federal immigration authority detains a student on school grounds. Such records shall include the date and time, name and identifying number of all federal immigration enforcement agents involved in the request; the agency employing the federal immigration enforcement agents and each agent’s official capacity; the time when each federal immigration enforcement agent arrived

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and left; whether the principal or designee was or was not present during the student interview; the reason the student was questioned and/or released; and any other pertinent information.

The school principal or designee shall also notify the Superintendent and enter a written Incident Report the same day to detail any immigration enforcement activity involving a District student. All Incident Reports shall be logged into the District’s centralized database system. All Incident Reports, and the centralized database system, must record the school site, nature of the incident or offense, race, ethnicity, gender, disability, if applicable, and age of the student or students involved in the incident. The database system shall be structured in a way that will protect the individual student’s identity if records from the system are released to the public.

The Incident Report procedures and protocol shall comport with requirements and guidelines set forth in the paragraphs above. Specifically, in drafting the written Incident Report, the school principal or designee shall not record the student’s personal identifying information.

**Training and Distribution of Policy**

Within the next 90 days, the Superintendent shall develop a plan for training teachers, administrators and other staff on how to respond to federal immigration authorities who request information about students and families and/or attempt to enter school property. The training plan shall also include procedures for notifying families about federal immigration enforcement agents’ efforts to gain information about students and families, and how to support students whose family members have been displaced because of immigration enforcement. The Superintendent shall create in-language versions of the plan and distribute it to all District families.

**Policy**  
**Adopted:**   
**Revised:**

**[District]**  
**[Location]**