

RESOLUTION NO. 20-022

BOARD RESOLUTION IN SUPPORT OF A NEW BORDER VISION

WHEREAS, The Berkeley Unified School District is committed to providing equal opportunity for all individuals in district programs and activities. Accordingly, BUSD programs and activities shall be free from discrimination, harassment, intimidation and bullying based on actual or perceived ancestry, age, color, disability, gender, gender identity, gender expression; nationality, race or ethnicity, religion, sex, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The Board shall promote programs which ensure that discriminatory practices are eliminated in all district activities. (Board Policy 0410, Board Policy 1311, Board Policy 4030, Board Policy 5145.3, Board Policy 5145.7); and

WHEREAS, the Berkeley Unified School District has found that peace is inseparable from justice, and the residents of Berkeley have welcomed to our city those who have been forced into exile and those who have come fleeing the threat of torture and death (BMC 3.68.010 E,L); and

WHEREAS, the Berkeley Council declared Berkeley to be a City of Refuge in 1971 (Resolution No 44,784 -N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), again in 2007 after ICE raids took place in the Bay Area Communities (Resolution 52,526-N.S.), and again in 2016 due to xenophobic rhetoric used during the presidential campaign and the increased hate crimes after the election of Donald Trump (Resolution 67,763-N.S.); and

WHEREAS, Berkeley Unified School District policy BP 5111.3(a), Protection Of Undocumented Students, states that “All students have the right to attend public school and enjoy access to equitable educational and programmatic services regardless of the immigration status of the student or of the student’s family members”; and further elaborates that, “District personnel shall not take any steps that would deny students access to education based on their immigration status or any steps that would impede the rights of any students to public education under the U.S. Supreme Court’s 1982 ruling in Plyler v. Doe, the Family Educational Rights and Privacy Act (FERPA), the California Education Code, and any other applicable state and federal law”; and

WHEREAS, The Berkeley Unified School District Board of Education passed Resolution 17-050, “Reaffirming Our Commitment to the Education of All Children and Making all BUSD Campuses a Safe Zone for Students and Families Threatened by Immigration Enforcement” that reads that “all District students who register for services and meet the federal and state criteria are entitled to receive all school services, including free lunch, free breakfast, transportation, and educational services, even if they or their family are undocumented and do not have a social security number and that no school district staff shall take any steps that would deny students access to education based on their immigration status or any steps that would impede the Plyler rights of these students to public education”; and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigrant and civil rights groups, faith leaders, legal experts, Berkeley Unified School District and university officials, and community activists together to discuss ways to strengthen our City of Refugee policy, as well as support our undocumented community members; and

WHEREAS, over the past two years, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley Unified School District (BUSD) in 2017 joined with seven other California school districts and multiple other education agencies and institutions in a pending federal lawsuit seeking to block the Trump administration from ending DACA (Deferred Action for Childhood Arrivals), asking the U.S. District Court for the Northern District of California to block the Department of Homeland Security (DHS) from implementing the announced decision to terminate DACA; and

WHEREAS, the Berkeley Unified School District believes that it is our duty and responsibility to provide each child in our District with a high quality public education in a safe and nurturing environment, the Board of Education has given these directions to the staff at our schools:

- Our staff will not request information or make a record of information on the immigration status of a student or family member. Furthermore, students and families will not be required to provide a social security number for school forms.
- If the Immigration and Customs Enforcement (ICE) agency asks for access to a school or for access to student information, they will be politely denied and referred directly to the Superintendent or Assistant Superintendent for Educational Services who will refer the matter to the District's legal counsel.
- Anyone in our schools seeking answers to questions about immigration will be referred to local non-profit immigration law organizations, such as the East Bay Community Law Center and the East Bay Sanctuary Covenant or other recommended resources; and

WHEREAS, the City is made up of a diverse population, with 19% of City residents who were born outside of the United States¹ and now form part of the fabric of our communities and contribute to the cultural, social and economic vibrancy of the City; and

WHEREAS, the City is a border city as it falls within 100 miles of a land or sea border under 8 C.F.R. 287.1, and as such the residents of the City are subject to the "warrantless powers" of Department of Homeland Security (DHS) employees who assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, and other conveyances without needing a warrant or the equivalent of probable cause as is

¹ <https://datausa.io/profile/geo/berkeley-ca/#demographics>

normally required under the U.S. Constitution's Fourth Amendment and the California Constitution's Article 1 Section 13; and

WHEREAS, the City also falls within 25 miles of an external boundary of the United States and as such the residents of the City are subject to DHS employees entering onto their private property, but not their dwelling, to patrol the border under 8 U.S.C. 1357(a)(3), which also undermines the constitutional rights of City residents; and

WHEREAS, City residents are subject to profiling by DHS employees because the U.S. Department of Justice's "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity"² prohibits profiling except in the vicinity of border, which includes our City, and this runs counter to California law under the Racial and Identity Profiling Act and Penal Code Section 13519.4; and

WHEREAS, over 160 countries took an unprecedented action in December 2018 by signing a Global Compact on Migration that calls for the protection of human rights at borders, setting new global standards and best practices for border governance as detailed in the United Nations Office of the High Commissioner for Human Rights "Recommended Principles and Guidelines on Human Rights at International Borders;"

WHEREAS, border communities in conjunction with human rights experts have drafted a "New Border Vision" that adopts global best practices and relates them to the U.S. borders to expand public safety, protect human rights, and welcome people with dignity at our borders;

WHEREAS, the "New Border Vision" leads with our values beginning with the belief that migrants are part of the human family and should be treated with dignity and respect; that migration is the exercise of the inalienable right to life, liberty, and the pursuit of happiness and as such, migrants should be humanized rather than criminalized; that we should treat all people as we would want to be treated, and give everyone full and fair opportunity to be safe.

NOW THEREFORE BE IT RESOLVED THAT the Berkeley Unified School District Board of Education:

Recognizes that the City of Berkeley is a border city, which falls into the zone of border enforcement, as defined in 8 C.F.R. 287.1, and as such have a particular stake in the border policies that affect our residents as well as our country.

Supports a "New Border Vision" that expands public safety, protects human rights, and welcomes people with dignity at the border. Our government should lead with our values, address our needs and adhere to good governance principles to create humane and well-functioning borders for the 21st century.

² Page 2, Footnote 2 of 2014 DOJ Guidance:

<https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>

Calls on Congress to eliminate “powers without warrant” in 8 U.S.C. 1357, which subjects City residents to potential unreasonable searches by federal authorities, undermining constitutional protections that the City is charged with protecting.

Calls on Congress to end the border-region exception to the prohibitions on profiling, which subjects City residents to potential profiling by federal authorities, undermining California’s protection against profiling, which the City is charged with protecting; and calls on Congress to legislate universal prohibitions.

Calls on Congress to eliminate the blanket waiver authority in Real ID Section 102, which gives federal authorities absolute and unreviewable authority to waive all local, state, and federal laws to build border barriers, undermining the well being of City residents, the protection of their natural and cultural heritage in California, and their due process rights.

Calls on Congress to end the criminalization of migrants for simply being migrants by eliminating 8 U.S.C. 1325, which leads to the criminal prosecution and incarceration of people asking for help; instead we should limit the adjudication of migrant cases to civil immigration proceedings to determine what remedies they may be eligible for including asylum.

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee, and President Donald Trump.

PASSED AND ADOPTED by Board of Education of the Berkeley Unified School District on this 8th day of January 2020.

AYES:

NOES:

ABSTAIN:

ABSENT:

Ka’Dijah Brown,
Clerk of the Board of Education
Of the City of Berkeley and of Berkeley Unified
School District of Alameda County, State of California