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Guiding Principles

Law enforcement activities in and around schools, including immigration enforcement, create hardships and barriers to health and educational attainment for immigrant students; cause a severe disruption to the learning environment and educational setting; and establish a pervasive climate of fear, conflict, and stress that affects all District students, regardless of their background, citizenship or immigration status.¹ The federal government has recognized the human cost associated with immigration enforcement on school campuses and declared that schools are “sensitive locations” at which immigration enforcement activity should not occur. For this reason, school officials should not use school resources or personnel to facilitate law enforcement activities on campus unless those activities serve a particular education-related purpose.

The District is committed to providing a safe, welcoming, and inclusive learning environment for all students, including immigrant students and their families. The District is also committed to protecting the confidentiality of sensitive information about students and their families through policies that prohibit information-sharing with law enforcement, including federal immigration authorities² 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 or other actual or perceived characteristics, including nationality, race or ethnicity, religion, disability status, gender, gender identity, gender expression, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. 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 non-school-related law enforcement activities³ including enforcing immigration law, to the maximum extent permitted by law, are necessary to fulfill the District’s obligation to provide all students equal access to education, regardless of their actual or perceived immigration status.

¹ “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 immigration matter within the purview of the Department of Homeland Security (“DHS”) or other federal agency charged with the enforcement of immigration law.

² “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, an officer, employee, or person otherwise paid by or acting as an agent of Customs and Border Protection (“CBP”) 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 immigration law.

³ “Non-school-related law enforcement activities” are matters that are not related to a Federal or State supported education program or that regard a law violation that was committed off school property. District property includes, but is not limited to, all school sites, early education centers, adult school facilities, and District administrative offices.

Prohibition Against Non-School-Related Law Enforcement Activities by District or on Campus

In addition to establishing a climate of fear, conflict, and stress, when campus police and other district staff⁴ are involved in law enforcement regarding non-school-related matters, including enforcing immigration law, it 1) creates the perception that their priority is law enforcement rather than education; 2) creates the perception that they are exercising federal immigration enforcement authority; 3) decreases the likelihood that students will cooperate with campus police and officials based on fears that this could lead to serious, negative consequences, including the student's deportation or the deportation of family members; and 4) conflicts with the District's constitutional obligation to provide equal educational opportunity to all students.⁵

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

Law enforcement officers employed by the District have no authority to enforce immigration law and shall not participate in immigration enforcement efforts. Where the District has an arrangement with an outside law enforcement agency to station law enforcement officers on District campuses, the District shall enter into a, or revise any already-existing, memorandum of understanding with that external law enforcement agency stating that its officers shall not participate in immigration enforcement efforts on campus. This means that, when stationed at District schools, law enforcement officers shall not: hold individuals in custody on detainers issued by federal immigration authorities,⁶ respond to notification or transfer requests from federal immigration authorities,⁷ make arrests based on civil immigration warrants,⁸ or otherwise facilitate the use of campus facilities for immigration enforcement purposes.

Law Enforcement 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 law enforcement officers,

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

⁵*Phylar v. Doe*, 457 U.S. 202, 219-230 (1982); *League of United Latin Amer. Citizens v. Wilson*, 908 F. Supp. 755, 774 (C.D. Cal. 1995); U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON EQUAL ACCESS FOR ALL CHILDREN TO PUBLIC SCHOOLS, REGARDLESS OF IMMIGRATION STATUS 1-2 (May 8, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.

⁶“Detainer” or “hold request” means a request from federal immigration authorities 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 to facilitate transfer to federal immigration authorities and includes, but is not limited to, DHS Form I-247D.

⁷“Notification request” means a request from any federal immigration authority that a local law enforcement agency informs federal immigration authorities 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 a request by any federal immigration authority that a local law enforcement agency facilitate the transfer of an individual in its custody to federal immigration authorities, and includes, but is not limited to, DHS Form I-247X.

⁸“Civil immigration warrant,” also known as an administrative removal warrant, means any warrant for arrest for a violation of federal civil immigration law or to execute a removal order, and includes civil immigration warrants entered in the National Crime Information Center database.

including immigration authorities, for access to a school site or to interview a student regarding non-school-related matters. Given the particular threat non-school-related law enforcement activities—including immigration enforcement—pose to the learning environment, these requests shall be immediately forwarded to the District Superintendent and District General Counsel. The District Superintendent and District General Counsel shall review the request and make a decision on whether facilitating such access will conflict with District compliance with the legal principles articulated in *Plyler v. Doe* and other applicable laws.

When law enforcement officers, including federal immigration enforcement agents, request access to a school site or to interview a student for a non-school-related purpose, the District Superintendent and/or District General Counsel shall ask for the officers' credentials, ask why the officers are requesting access, and ask to see a warrant signed by a federal or state judge. The officers must provide to the Superintendent and/or General Counsel written authorization from their employing agency instructing them to enter District property and 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 officers are not able to provide such written authority and warrant, the Superintendent and/or General Counsel shall deny their request for access to District property unless otherwise required by law, as determined by the General Counsel.

If the law enforcement officers satisfy the above criteria, the school site principal or his/her designee shall monitor the officers' investigation and ensure the officers are not given 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 disrupting the school campus. The principal or designee shall discourage law enforcement officers from interviewing or escorting students through school hallways in view of students. The District expects that law enforcement officers will provide the principal or designee the opportunity to be present during any interview of a student.

Access to Student Records

The District shall not disclose student records to non-school officials for any purpose that is not education-related unless there is parental consent or a valid court order for the records. This prohibition includes requests from law enforcement to access student directory information and information that may be disclosed to law enforcement under the Family Education Rights and Privacy Act ("FERPA").⁹ If presented with any subpoena for student records, including an ICE Administrative Subpoena,¹⁰ the District's General Counsel shall make a determination whether the request is education-related and, if not, refuse access to the records based on the District's general policy against sharing student records for any purpose that is not education-related and the District's need to ensure its resources are effectively allocated. In the event the law enforcement agency seeks to enforce the subpoena for the records 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 a subpoena for access to records.

⁹ FERPA authorizes, but does not require, the District's voluntary disclosure of student directory information. The District will refuse any informal request for voluntary disclosure of student directory information.

¹⁰ "ICE Administrative Subpoena" is a subpoena to require the testimony of witnesses or production of records.

When required by judicial warrant¹¹ or other court order to provide access to a student's records for a non-school-related purpose, including immigration enforcement, the school site principal or his/her designee shall monitor the law enforcement investigation. Such monitoring shall include guaranteeing that the law enforcement officers access only the information specified in the warrant or judicial order.

If any member of the BUSD community (including students, families, or staff) has questions regarding their legal rights in relation to federal immigration enforcement ~~about their immigration status, District personnel shall not refer them to the Immigration and Customs Enforcement Office ("ICE") or any other government agency. Instead,~~ District personnel shall refer them to local non-profit immigration law organizations; refer members of the District community to those listed organizations if any member has questions about their immigration status; and encourage the Superintendent to increase and enhance partnerships with community based organizations and legal service organizations who provide resources for families facing deportation or other adverse immigration consequences; and that a Berkeley USD be part of a rapid and ready responsive network ~~be created to assist students whose family member(s) have been detained by ICE. A list of such organizations shall be compiled by the Superintendent or designee and widely disseminated at school sites and on the District's website. The Superintendent is also encouraged to increase and enhance partnerships with community-based organizations, legal services organizations, and other educational institutions (such as community colleges and universities) to provide resources for families of students or District employees who are facing deportation or other adverse immigration consequences.~~

The Superintendent or designee shall ensure that copies of this Policy are distributed and circulate notification to all District and school sites and post the entire non-discrimination policy on the District's website. The Superintendent or designee shall ensure all teachers, school administrators, and other staff are trained on how to implement this policy and shall ensure that notification with required translation be distributed to families to fully inform them of their rights in the District.

Law Enforcement Request to Take Custody of a Student

When law enforcement officers, including federal immigration enforcement agents, request to interview a student for a non-school-related purpose, the District Superintendent and/or District General Counsel shall ask for the officers' credentials, ask why the officers are requesting the interview, and ask to see a warrant signed by a federal or state judge. The officers must provide to the Superintendent and/or General Counsel written authorization from their employing agency instructing them to interview or arrest the student, as well as a warrant signed by a federal or state judge that specifies the name of the person under arrest. If the officers are not able to provide such written authority and warrant, the Superintendent and/or General Counsel shall deny their request to interview the student unless otherwise required by law as determined by the General Counsel. The District shall not use its resources to facilitate access to students, including any law enforcement interview, that does not have an education-related purpose and is therefore disruptive of the educational environment.

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 parent or guardian. Alternatively, the District shall release the student into the custody of any individual who presents a Caregiver's Authorization Affidavit¹² 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 of the child within 12 hours, the District will release the student to County Child Protective Services.

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

Keeping sensitive student information confidential is essential to creating a safe and inclusive educational environment. Accordingly, District staff shall only collect information about students that is necessary for educational purposes. Certain categories of information about a student or their family members are deemed "sensitive and confidential," and may not be shared with any non-school officials, including any law enforcement agency, for any non-educational purpose absent parental consent or a valid court order.¹³ Sensitive and confidential information includes the following non-exhaustive list:

1. Actual or perceived national origin;

¹¹ "Judicial warrant" means a warrant based on probable cause and issued by a state or 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.

¹² 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.

¹³ FERPA authorizes, but does not require, the District's voluntarily disclosure of student directory information. The District will therefore refuse any informal request for voluntary disclosure of student directory information.

2. Actual or perceived immigration or citizenship status, including a student's social security number or information contained in a student's passport, birth certificate, residency- or citizenship-related documents;
3. Actual or perceived religion;
4. Actual or perceived gender identity;
5. Actual or perceived sexual orientation;
6. Actual or perceived status as a crime victim or witness;
7. Records of juvenile criminal allegations, arrests, convictions, or adjudications;
8. School discipline record;
9. Health or medical information;
10. Recipient of public assistance; and
11. All information included in an individual's or household's income tax records.

District staff shall not inquire about a student's or their family member's citizenship or immigration status, or require the student or parent to produce documentation of a student's or their family member's citizenship or immigration status (such as asking for a green card, birth certificate, or citizenship papers), at any time. District staff shall not require a student to present a Social Security number to apply, enroll in, or register for services for which the student is eligible.

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

District staff shall not initiate communication with any law enforcement agency, including any federal immigration enforcement agency, regarding a student's or their family member's sensitive and confidential information referred to above.

District policy regarding access to District schools and student records is set forth above in the section entitled "Law Enforcement Access to School Site or Request to Interview a Student."

Prohibition Against Information Sharing Between District Law Enforcement Personnel and Local Law Enforcement Agencies for a Non-School-Related Purpose

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 law enforcement authorities for a non-school-related purpose across all aspects of the District to the fullest extent possible under the law. District security officers shall not enter into 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

The District shall not employ officers from, or enter into agreements for security services with, law enforcement agencies that have agreements, policies, or procedures that promote or facilitate information-sharing for non-school-related purposes such as immigration enforcement.

The District recognizes that policies and procedures authorizing information-sharing between law enforcement agencies, including federal immigration agencies, 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, the District will review

the information-sharing agreements, policies, and procedures of every law enforcement agency with which the District intends to enter into a formal agreement for security or other services. If the District is currently under an agreement with a local law enforcement agency for security services, the District will review the local law enforcement agency's information-sharing policies, procedures, and agreements for provisions that promote or facilitate information-sharing for non-school-related purposes, including 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 law enforcement agency has a problematic information-sharing agreement or practice, the District shall consider the following:

- Whether the law enforcement agency shares information on shared databases;¹⁴
- Whether the law enforcement agency communicates with other agencies for a non-school-related purpose, including federal immigration authorities, in any capacity, including, but not limited to:
 - In response to contact initiated by federal immigration authorities; 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 enforcement agency, 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 law enforcement agency, including any federal immigration enforcement agency, requests or gains access to a District student or their records for a non-school-related purpose, District staff shall immediately notify the student's parent or guardian that the law enforcement agency 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.

¹⁴ Known shared databases and mechanisms include, but are not limited to: CalGangs, Priority Enforcement Program ("PEP"), and Criminal Alien Program ("CAP").

When notifying the student's parent or guardian, District staff shall also direct the notified parent to District-approved resources regarding parents' rights when law enforcement authorities, including 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.

Data Tracking

The school principal or designee shall document each instance when any law enforcement authority requests access to a school site, student records, or student for a non-school-related purpose; each instance when such law enforcement authority interviews a student on school grounds; and each instance when such law enforcement authority detains a student on school grounds. Such records shall include the date and time, name and identifying number of all law enforcement officers involved in the request; the agency employing the law enforcement officers and each officer's official capacity; the time when each law enforcement officer arrived 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 law enforcement activity with a non-school-related purpose, including 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 law enforcement authorities with a non-school-related purpose 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 such law enforcement officers' 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]