

PRACTICE ADVISORY

The Legal Authority for “Sanctuary” School Policies

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I. Summary

Since Donald Trump’s election as president of the U.S., schools have asked how far they can legally go to protect their students using “sanctuary,” “safe zone,” or “welcoming” policies.¹ The National Immigration Law Center, in conjunction with several other organizations, prepared three model resolutions to provide to schools: one for K–12 schools in California, one for K–12 schools countrywide, and one for colleges countrywide (see [section IV](#), below, for models). The models are meant to be live documents that can be

¹ The term “schools,” as used in this practice advisory, unless otherwise specified includes K–12 schools, preschool and early education centers, adult schools, community colleges, other colleges, and universities.

This practice advisory was written by Jessica Hanson, with substantial support from Shiu-Ming Cheer and Tanya Broder. It does not constitute or offer legal advice.

LOS ANGELES (Headquarters)
3450 Wilshire Blvd. #108 – 62
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax



WASHINGTON, DC
P.O. Box 34573
Washington, DC 20043
202 216-0261
202 216-0266 fax

updated as we continue to learn more about issues that arise and incorporate feedback from the implementation of policies across the country.

As more and more schools consider adopting such policies, many people have asked what legal authority exists to justify and enforce them. This practice advisory examines the core sources of legal authority for such policies and demonstrates how schools have used these fonts of authority to craft and pass resolutions to support their students.

Many schools have passed their own policies that all faculty and staff of the schools must follow. These policies are intended to reinforce existing laws, policies, and constitutional rights and to advance and support the educational mission of the schools. Thoughtful and thorough implementation of these policies, which includes training all staff and faculty of a campus, will maximize their effectiveness. Because U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and other federal immigration enforcement agencies largely rely on consent and open access to effectuate their enforcement activities, putting protections in place ensures that federal agencies respect constitutional rights and do not undermine the rights or needs of students pursuing an education or staff attempting to educate all students. With all the employees of a school working together to implement these policies correctly — for example, by ensuring that any request to enforce immigration laws on school property is scrutinized by an appropriate official who can ensure that there is a valid warrant — the rights of the students and educational climate can be protected.

Schools can legally refuse to assist ICE and CBP in locating students, honoring detainer (hold) requests, or providing certain information to ICE and CBP. Schools can also create policies that limit ICE and CBP’s access to campuses by setting up a process that immigration agents or any law enforcement authorities must complete before coming onto a campus (including an approval process through the school board or legal counsel and a judicial warrant). However, if ICE or CBP have a valid judicial warrant that is specific to the individual for whom they are searching or if there is a health or safety emergency that requires them to enter a campus site, they have the legal authority to do so. Schools can and should create special resource centers or other on-site spaces for students and families to find resources and support.

School “sanctuary” policies may differ between K–12 schools and colleges/universities, because the laws that apply are different. For example, *Plyler v. Doe* applies in the K–12 context to protect the constitutional right of all students, regardless of their immigration status, to have access to a K–12 education.² *Plyler* does not apply to the higher education context. The tort law “special relationship” and duty of care that a school owes its students is much more established in the K–12 context, allowing for more protections of students, whereas in the college context it is offset by more mature students’ independence, privacy rights vis-à-vis the school, and contractual obligations.³ Another example of where schools’ policies should differ is with respect to the Student and Exchange Visitor Program (SEVP), which applies only to certified colleges and universities that enroll foreign exchange students.

² 457 U.S. 202 (1982).

³ This takes on increased significance in the college dormitory context, where many dormitory contracts require a student to allow administrators to conduct routine entry or searches of their dormitories. See [section II.D.](#) for more information.

To continue to receive certification to enroll those students, SEVP-certified institutions must comply with mandatory data-reporting for a subset of students as well as enforcement agency access to campus. Thus, each of the considerations below must be weighed differently in a K–12 context versus a college/university context.

II. Sources of Legal Authority in “Sanctuary” School Policies

The authority for “sanctuary” school policies comes from many sources, including the U.S. Constitution and U.S. Supreme Court cases interpreting it; federal statutes that create rights; federal agency guidance; state constitutions, statutes, and agency guidance; and city, county, and other local ordinances or laws. School resolutions can draw on some common authority, but, depending on the state and locality in which the school is located, may have additional or unique protections to rely upon. Some of the most common sources of authority are discussed below. If you would like more support or guidance on the authority that exists in your area, feel free to reach out to NILC.

A. *Plyler v. Doe*

Many K–12 schools’ resolutions cite to or rely on the Supreme Court case *Plyler v. Doe*,⁴ which more than 35 years ago established the right of all children to a free public K–12 education regardless of immigration status.⁵ School resolutions cite or allude to *Plyler* not only as guaranteeing that all students must be able to attend school, but also as authority to disallow public school systems from requiring students or their parents to provide birth certificates or Social Security cards as part of enrollment, test-taking, or participation in extracurricular activities, or from imposing any other requirements that may chill access to public education.⁶ Some districts’ resolutions cite directly to *Plyler*; for example, the Seattle Public Schools District No. 1 adopted a resolution on February 15, 2017, that states in part, “[T]he decision of the Supreme Court in *Plyler v. Doe* ensures all children are legally entitled to equal access to a free public education regardless of immigration status.”⁷ Similarly, the Milwaukee Public Schools Resolution, adopted on February 23, 2017, states, “The United States Supreme Court held in *Plyler v. Doe* (1982) that no public school district has a basis to deny children access to education based on their immigration status, citing the harm it would

⁴ 457 U.S. 202 (1982).

⁵ See Ignacia Rodriguez, “On *Plyler v. Doe*’s 35th Anniversary, This Landmark Supreme Court Decision Must Be Honored and Protected,” *The Torch*, June 15, 2017, www.nilc.org/2017/06/15/plyler-v-doe-must-be-honored-and-protected/.

⁶ See also *Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts, and Parents* (Civil Rights Division, U.S. Dept. of Justice, May 8, 2014), www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf.

⁷ Seattle Public Schools District No. 1 Board Resolution No. 2016/17-12, Resolution Affirming the Provision of Safe, Welcoming & Inclusive Schools for All Students Without Regard to Race, Religion, National Origin, or Immigration Status (Feb. 15, 2017), https://www.seattleschools.org/UserFiles/Servers/Server_543/File/Board%20Resolution%20201617%2012.pdf.

inflict on the children and society itself and the equal protection rights of the Fourteenth Amendment.”⁸

Other districts’ resolutions do not cite *Plyler* directly but lay out provisions that are rooted in *Plyler*’s holding. For example, the Minneapolis Special School District No. 1 resolution, adopted on December 13, 2016, states that all staff and employees of the district’s schools

shall continue to assure that all students have access to the learning and other educational services available at their schools, including rigorous courses, student extracurricular activities and athletics, and support services regardless of the student’s or family’s immigration status.⁹

Plyler-based rules also include general policies that individuals or organizations are not allowed to enter a school site “if the educational setting would be disrupted by that visit.” For example, the 2007 San Francisco Public Schools policy states:

[The] School Board has found that the presence of ICE is likely to lead to a disruption of the educational setting. Therefore, any request by ICE to visit a school site should be forwarded to the Superintendent’s Office for review before a decision is made to allow access to the site.¹⁰

Milwaukee Public Schools’ safe haven resolution similarly states, “It is the policy of Milwaukee Public Schools not to allow any individual or organization to enter a school site if the educational setting would be disrupted by that visit” and that the school district must “take action to assure all students and families that disruptions to the educational environment that the actions of Immigration and Customs Enforcement (ICE) may create will be opposed by all legal means available.”¹¹ The Los Angeles Unified School District’s resolution, first adopted in February 2016 and updated in May 2017, contains similar language, as does the February 2017 Austin Independent School District resolution.¹²

⁸ Milwaukee Public Schools Resolution 1617R-007 by Directors Joseph and Miller to Declare Milwaukee Public Schools to Be a Safe Haven for Its Students and Families Threatened by Immigration Enforcement or Discrimination (Feb. 23, 2017), <https://esb.milwaukee.k12.wi.us/attachments/7a9f4ddd-8ccb-4ada-ab2a-124a66250bcc.pdf> (hereinafter “Milwaukee Public Schools Resolution”).

⁹ Minneapolis Special School District No. 1 Board of Education, Resolution Regarding District Practices Related to Immigration and Customs Enforcement (Dec. 13, 2016), <https://v3.boardbook.org/Public/PublicItemDownload.aspx?ik=39770800>.

¹⁰ SF Bd. of Educ. Resolution No. 74-24A2, Commitment to Education of All Immigrant Children and Opposition to Recent ICE Raids, adopted by Bd. Of Educ., at Regular Meeting of Apr. 24, 2007, <http://www.sfusd.edu/assets/sfusd-staff/board-archive/memberreso/Mar%20%20%20IMMIGRATION%20%204%2024%2007.pdf>.

¹¹ Milwaukee Public Schools Resolution, *supra* note 8.

¹² Los Angeles Unified School District Resolution No. 093-16/17, Reaffirmation of Los Angeles Unified School District Schools as Safe Zones for Students and Families Threatened by Immigration Enforcement, May 9, 2017, <https://www.documentcloud.org/documents/3711265-May-9-2017-Immigration-Resolution.html>; Los Angeles Unified School District Resolution No. 032-15/16, Campuses as Safe Zones and Resource Centers for Students and Families Threatened by Immigration Enforcement, Feb. 9, 2016, <http://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/582/LA%20Unified%20Campuses%20as%20Safe%20Zones%20and%20Resource%20Centers%20for%20Students%20and%20Families%20Thr>

Plyler has provided authority to strike down state laws that would chill students' access to a free K–12 education. In *Hispanic Interest Coalition of Alabama (HICA) v. Governor of Alabama*, the Eleventh Circuit Court of Appeals struck down Alabama's House Bill-56 section 28, which required K–12 schools to ascertain the immigration status of every student, as a violation of *Plyler*.¹³ The court cited the Supreme Court's principle in *Zablocki v. Redhail*: "When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests."¹⁴ While *Plyler* did not establish that access to K–12 education is a "fundamental right," courts have applied its principles to strike down policies that interfere with students' rights to attend school.

Thus, *Plyler v. Doe* provides broad protections for students to attend K–12 schools regardless of their immigration status, and K–12 school districts can and should rely on this Supreme Court authority when considering and drafting a "safe zone" resolution.

B. Family Educational Rights and Privacy Act (FERPA): Limiting ICE's Access to Information

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, 34 CFR part 99, provides a legal ground for protecting students' personal information by regulating when and to whom that information may be disclosed. Since the 2016 presidential election, many students and educators have asked, "Can my school prevent ICE or CBP from accessing students' personal data?" FERPA provides a significant layer of protection in this realm.

Since FERPA covers K–12 and postsecondary education, the analysis that follows applies to both. The only difference pertains to the age of the student. The parent holds rights under FERPA vis-à-vis their child's information until the child turns 18, at which point the rights transfer to the child, who is called an "eligible child." Children under 18 therefore rely on their parents to enforce their rights under FERPA, and people 18 or older must exercise their own rights.

The main provision of FERPA upon which schools may rely is 20 U.S.C. section 1232g(b), which says that schools may not release the personal information of a student without the parent or eligible child's prior consent, with several exceptions. None of these exceptions appear to be particularly vulnerable to use by immigration enforcement agents, but we will continue monitoring practices on the ground to see whether agents begin using any of these exceptions to circumvent FERPA's protections.¹⁵

[eatened%20by%20Immigration%20Enforcement.pdf](#); Austin Independent School District Resolution (Feb. 2017), https://www.austinisd.org/sites/default/files/dept/ell/docs/AISD_022017_Board_Resolution.pdf.

¹³ 691 F.3d 1236, 1248-49 (11th Cir. 2012).

¹⁴ 434 U.S. 374, 388 (1978).

¹⁵ The relevant exceptions to these protections are the following: "authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph 3" (§ 1232g(b)(1)(C)(ii)) (In turn, the referenced paragraph provides that these numbers may be reported only if aggregated and separated from personally identifiable information, and destroyed after the use of them is complete.); "in connection with a student's application for, or receipt of, financial aid" (§ 1232g(b)(1)(D)); "State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute" regarding the juvenile justice system, with separate

There is a broad exemption under FERPA, however. The definition of “personal information,” which is the protected information under FERPA, does not cover “directory information.” Directory information includes the student’s name, address, telephone listing, and date and *place* of birth, among other things. In the context of immigration enforcement, place of birth is an especially sensitive piece of information since, to deport someone, the government must first prove that the person is not a U.S. citizen or national,¹⁶ and birth abroad is one indication that the person *might* be neither. The other information — addresses, dates of birth, etc. — are also sensitive in that ICE or CBP may request that information in order to find and detain the student, or other individuals related to the student, outside of school. Thus, “directory information” is not benign for individuals who themselves are or whose family members are potential targets of immigration enforcement.

Under FERPA, schools may, but are not required to, release this directory information after “public notice” and a “reasonable time” for the parent or eligible student to inform the school that they do not want that information released without prior consent. Ideally, schools should adopt policies to ensure that “public notice” is provided periodically, in an accessible format and in a family’s primary language so that students and parents are aware that they must opt out if they do not wish this information to be shared.

An overarching strategy for protecting children and families (and helping to ensure that children are not deterred from attending school) in the K–12 context and for more mature students in the college context is for schools not to collect any immigration-related data from students in the first place. Schools should avoid asking students for information such as their place of birth or visa-related information, except where required by law.¹⁷ Schools also should refrain from asking students or parents for Social Security numbers in instances when they’re not required — and especially not at the time the student enrolls, as doing so may give the incorrect impression that the student must have a Social Security number in order to enroll. Several schools have adopted internal policies regarding the collection of information to exclude immigration-related information about students and their family members, as well as to remove that information if it has been recorded. For example, the Albuquerque Public Schools resolution states:

Should an immigrant parent/legal guardian or student, for whatever reason, voluntarily offer a document generated by the Department of Homeland Security or the Department of Justice — such as a passport, resident alien card, or I-94 — for identification purposes, *the school shall take special care to refrain from recording:*

- any personal information from the document;

provisions for statutes passed before and after 1974, and with a clause at the end of the section stating that “a State [may] further limit[] the number or type of State or local officials who will continue to have access thereunder” (§ 1232g(b)(1)(E)); and, finally, “subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons” (§ 1232g(b)(1)(I)).

¹⁶ 8 C.F.R. § 1240.8(c). To find that a person in deportation proceedings is deportable, the government “must first establish the *alienage* of the [person]” (emphasis added).

¹⁷ In the college/university context, this is with the exception of any required data collection and sharing of foreign exchange students’ information pursuant to the Student and Exchange Visitor Program.

- information concerning the type of document submitted;
- that a document generated by the Department of Homeland Security or Department of Justice was submitted.
- The school shall only record that personal identification was presented.¹⁸

The resolution continues:

Schools and district personnel shall take immediate action to remove any information regarding the immigration status of a student or a student's parents/legal guardians from any and all school records.¹⁹

Advocates should also push for school-level, local, and/or statewide policies that increase the amount and types of information that is considered “personally identifiable information” in that location so as to more fully protect individuals’ private data from being shared. Like many federal laws establishing individual rights, FERPA is a floor upon which school districts, localities, and even states can create policies that are more protective, as long as they do not conflict with other federal or state laws. See [section II.F.](#), below, for more details.

C. Other Federal Statutes

At least two other federal statutes provide layers of protection for all students while in school, including for immigrant students and students from mixed-immigration status families. First, Title VI of the Civil Rights Act of 1964 provides that entities that receive federal funding, including schools and school districts receiving U.S. Department of Education funding, may not discriminate based on race, color, or national origin.²⁰ Denial of language services is an example of discrimination covered by Title VI.²¹

Second, the McKinney-Vento Homeless Assistance Act requires that schools and districts immediately enroll children who are considered homeless, including migrant children regardless of immigration status,²² even if they lack normally required documents. The term “homeless” is broadly defined, and the statute states that youth who lack “a fixed, regular, and adequate nighttime residence” are considered homeless.²³ Thus, some children, including unaccompanied minors, may be able to enroll in school immediately without

¹⁸ See Albuquerque Public School District Policies on Immigrant Students and Safe Schools and Relations with Law Enforcement (rev. 2010), www.aps.edu/about-us/policies-and-procedural-directives/procedural-directives/j.-students/safe-schools (emphasis added). This policy was created in response to a lawsuit brought by the Mexican American Legal Defense and Educational Fund (MALDEF) after students were detained by an Albuquerque high school’s campus security and held for Border Patrol agents to pick them up.

¹⁹ *Id.*

²⁰ 42 U.S.C. § 2000(d) et seq.

²¹ *Race and National Origin Discrimination Overview of the Law* (Office for Civil Rights, U.S. Dept. of Education, Oct. 16, 2015), <https://www2.ed.gov/about/offices/list/ocr/raceoverview.html>.

²² 42 U.S.C. § 11434A(2)(b)(iv).

²³ 42 U.S.C. § 11434A(2)(A). For more information, see *The Most Frequently Asked Questions on the Education Rights of Children & Youth in Homeless Situations* (National Association for the Education of Homeless Children and Youth and National Law Center on Homelessness & Poverty, Oct. 2017), http://naehcy.org/wp-content/uploads/2018/04/2017-10-16_NAEHCY-FAQs.pdf.

normally required documents pursuant to McKinney-Vento — a fact that has become more salient as the federal government has forcibly separated children from their parents at the U.S.-Mexico border pursuant to its “zero-tolerance policy.”²⁴

D. Fourth Amendment Protections Against Unreasonable Searches and Seizures

Much legal research is being conducted to determine the scope of students’ Fourth Amendment protections while at school and schools’ authority to demand judicial warrants from ICE, CBP, or any other law enforcement agency (aside from campus-based law enforcement) before allowing them on campus. This practice advisory provides only a brief summary of this field of law.

The Fourth Amendment protects individuals from unreasonable searches and seizures, and states that no warrant shall issue without probable cause. In addition, case law has established that when a person has a “reasonable expectation of privacy,” the Fourth Amendment disallows law enforcement officials from entering that space to apprehend them unless they have a judicial warrant.²⁵ In the school setting, the main factual scenarios in which the Fourth Amendment would come into play are if ICE or CBP agents physically enter a campus to investigate, speak with, or detain a student (and potentially make “collateral arrests”²⁶); or if ICE or CBP agents attempted to enter a student’s dormitory to arrest the student (again, with the possibility of collateral arrests). By far the most frequent question students and educators have asked since the November 2016 election is, “Can my school prevent ICE or CBP from physically entering campus?”

The scope and application of Fourth Amendment protections vary depending on the facts and specific situations. The reach of the Fourth Amendment may differ significantly between K–12 campuses and college/university campuses, due to the stark factual differences between them, including the relatively open nature of college/university campuses, the age and maturity of the students, and whether the students reside on campus. The more closed and controlled a campus is, the greater the likelihood that school administrators can help preserve its students’ Fourth Amendment rights by requiring law enforcement officers to present a valid judicial warrant before entering campus property. Because the law dictating

²⁴ For a brief explanation of this policy, see Beverly Brown, “Too Late to Ask: Zero Tolerance Policy,” *Harvard Political Review*, Aug. 22, 2018, <http://harvardpolitics.com/columns/too-late-to-ask/>.

²⁵ See *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (“We have recently held that ‘the Fourth Amendment protects people, not places,’ ... and wherever an individual may harbor a reasonable ‘expectation of privacy ... he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted.’”) (Internal citations omitted.).

²⁶ “Collateral arrest” is a term used by ICE and CBP to refer to individuals that are arrested in an enforcement operation or raid but were not the original targets of the operation or raid. Under the Obama administration, ICE and CBP rarely conducted collateral arrests, but they have significantly increased the practice under the Trump administration. Indeed, on February 21, 2017, ICE issued an internal memorandum informing all Enforcement and Removal Operations (ERO) agents that they are required to make collateral arrests when conducting enforcement activity. See Memorandum from Matthew T. Albence, Executive Associate Director, U.S. Immigration & Customs Enforcement, “Implementing the President’s Border Security and Interior Immigration Enforcement Priorities” (Feb. 21, 2017), available at <https://www.documentcloud.org/documents/3889695-doc00801320170630123624.html> (“Effective immediately, ERO officers will take enforcement action against all removable aliens encountered in the course of their duties.”).

the Fourth Amendment's protections is very fact-specific, K–12 and college settings are discussed separately below.

Some advocates in both K–12 and college settings have asked whether schools can establish a safe or private space on campus within which students may lock themselves for protection against ICE or CBP and assert Fourth Amendment protections. While students have a reasonable expectation of privacy in their dormitories (see below), it is less certain that schools can create private spaces for the purpose of sheltering students. This is because federal law prohibits harboring a person who is known to be undocumented from immigration enforcement.²⁷ A school that knowingly harbors or shields undocumented students from enforcement could open itself to liability. Before taking such steps, schools must seriously consider the potential liability for federal criminal harboring charges.²⁸

1. K–12 Schools

Both K–12 schools and colleges across the country have made clear that ICE and other law enforcement officials are not allowed on campus to conduct enforcement activity without a prior review process including the school board and/or legal counsel and unless a law enforcement official has a federal judicial warrant that itself will be subject to a review process. In the K–12 context, these protections are greater, because K–12 schools are typically closed campuses where someone must pass through an administrative office or screening before entry.

In addition to the closed nature of most K–12 campuses, the students are typically minors, and thus teachers and employees have more control and responsibility over the physical location and behavior of the students. Therefore, K–12 schools can set up strict procedures for any guest, including law enforcement agents, to enter the school premises and have access to students. For example, the Los Angeles Unified School District (LAUSD) passed a resolution with the following provision regarding ICE access to schools:

[A]bsent exigent circumstances, any request by immigration agents for information or to access a school site shall be immediately referred to the Local District Administrator of Operations and the Los Angeles School Police Department and forwarded to the Superintendent and General Counsel for review and a decision on whether to allow access to the site, and/or a decision on whether the information will ensure District compliance with *Plyler v. Doe* and other applicable laws. The request must be provided with adequate notice so that the Superintendent and General Counsel can take steps to provide for the emotional and physical safety of its students and staff. The determination and steps may include the following:

1. Verify the immigration agent's credentials, ask the agent why the agent is requesting access, and ask to see a warrant signed by a Federal or State Judge.
2. Immigration agents must provide written authority from ICE including, pursuant to the sensitive locations memo, documentation of prior approval by

²⁷ 8 U.S.C. § 1324(a)(1)(A)(iii).

²⁸ For more information, see Francisco M. Negrón Jr., et al., *Lifting the Lamp Beside the Schoolhouse Door: A Legal Guide to Serving Undocumented Students in Public Schools* (National School Boards Association, 2017), https://cdn-files.nsba.org/s3fs-public/reports/2017_NSBA_Immigration_Guide.pdf.

officials of the Homeland Security Investigations and Enforcement and Removal Operations divisions of ICE instructing them to enter District property and for what purpose as well as a warrant signed by a Federal or State Judge which specifies the name of the person under arrest.²⁹

Here's an example of the effectiveness of a strict visitor and law-enforcement access policy: In early May 2017, ICE agents attempted to enter an elementary school in Queens, New York, to apprehend a fourth-grade student. The front office staff turned the officers away, however, because the school's visitor policy specifically barred law enforcement's access to students without a judicial warrant.³⁰

While anecdotal examples of ICE attempts to enforce immigration laws at K–12 schools have increased, there are few factually on-point court cases regarding this activity. This could be because the longstanding sensitive locations policies of the U.S. Department of Homeland Security (DHS)/legacy Immigration and Naturalization Service (INS) (see [section II.E.](#), below) have been largely effective in preventing immigration enforcement activities from taking place on school campuses, and isolated incidents of immigration enforcement on campuses generally have not been litigated.

In a rare example of a case that was litigated, in 2006, the Mexican American Legal Defense and Educational Fund (MALDEF) filed a lawsuit against Albuquerque Public Schools as well as the Border Patrol (a division of CBP) when school police officers detained three teenage students without probable cause, discovered they had committed no crime, but nonetheless held them for one and a half hours until they could be turned over to Border Patrol custody.³¹ MALDEF won a settlement that led to a Albuquerque Public Schools resolution that school police would no longer cooperate with immigration officials or detain students based on immigration status or perceived immigration status.³² Although the case was settled and therefore a determination on the merits was never made, the lawsuit alleged Fourth and Fourteenth Amendment, Federal Tort Claims Act, and New Mexico constitutional claims. This case serves as a reminder to schools that they can face liability if they do not take steps to ensure that the constitutional rights of their students are protected.

2. Colleges, Universities, and Adult Schools

The college setting has different implications for Fourth Amendment rights because most students have reached the age of majority and, as adults, have much more autonomy over their whereabouts. In addition, most colleges, universities, and adult schools are open

²⁹ Los Angeles Unified School District Resolution No. 093-16/17, Reaffirmation of Los Angeles Unified School District Schools as Safe Zones for Students and Families Threatened by Immigration Enforcement, May 9, 2017, <https://www.documentcloud.org/documents/3711265-May-9-2017-Immigration-Resolution.html>.

³⁰ See Ben Chapman and Rich Schapiro, "Queens School Boots Federal Immigration Agents Seeking Fourth Grader from Premises for Not Having Warrant," *N.Y. Daily News*, May 13, 2017, www.nydailynews.com/new-york/queens/nyc-school-boots-federal-agents-seeking-child-due-no-warrant-article-1.3163244.

³¹ See Third Amended Complaint in *Gonzalez v. City of Albuquerque*, No. CV-05-580 JB/WPL (D.N.M. Nov. 9, 2006), www.maldef.org/assets/pdf/third_amended_complaint_plaintiffs.pdf.

³² See Albuquerque Public School District Policies on Immigrant Students and Safe Schools and Relations with Law Enforcement (rev. 2010).

campuses that anyone can enter without being screened. This lowers the amount of protection schools can realistically provide from ICE or CBP agents entering campus. However, colleges still can and should adopt rules that denote the campus as “closed” to the public and require law enforcement agents to show a valid warrant before entering campus and/or gaining access to a student. For example, the president of Harvard University wrote a public email to all students on November 28, 2016, which includes the following message:

[A]s a matter of longstanding policy, law enforcement officials seeking to enter campus are expected to check in first with the HUPD [Harvard University Police Department] and, in cases involving the enforcement of the immigration laws, will be required to obtain a warrant.³³

An additional difference in the college setting is that many students live on campus. Students enjoy a reasonable expectation of privacy in their dormitories, just as they would in their homes, and thus can raise Fourth Amendment challenges to unlawful searches or seizures that take place against them while they are in their dorms. Law enforcement agencies need a judicial warrant to search a student’s dorm room without consent.

Most Fourth Amendment dormitory cases have centered on the issue of who conducted the search — school administrators, law enforcement officials, or school administrators in conjunction with law enforcement officials. Courts have found that school administrators conducting a dormitory search on their own does not trigger students’ Fourth Amendment rights, given that students often enter into contracts with the school that allow school administrators to conduct searches and inspections in the dorms. In addition, in some cases where a school administrator or employee assists a law enforcement official in entering a student’s dorm, courts have found that the student’s rights were not implicated. It is only when the law enforcement officer acts *independently* of the school administration that Fourth Amendment rights come into play.³⁴

This case law underscores the importance of school policies that reaffirm that school police/security are not, and will not cooperate with, immigration enforcement agencies. The clearer the line between school police/security and immigration enforcement, the easier it will be for students to enforce their Fourth Amendment rights in dorms against intrusion by immigration enforcement officials.

Possible remedies for violations of students’ Fourth Amendment rights include suppression of evidence in later immigration proceedings or potential termination of those proceedings.³⁵

³³ “Supporting Our Community” (letter from Drew Faust, president of Harvard University, to members of the Harvard community, Nov. 28, 2016), www.harvard.edu/president/news/2016/supporting-our-community.

³⁴ See, e.g., Elizabeth O. Jones, *The Fourth Amendment and Dormitory Searches*, 33 J.C. & U.L. 597, 603 (2007).

³⁵ For more information on remedies in immigration court for Fourth Amendment violations, see *Motions to Suppress in Removal Proceedings: A General Overview* (American Immigration Council, Aug. 1, 2017), https://www.americanimmigrationcouncil.org/practice_advisory/motions-suppress-removal-proceedings-general-overview.

E. DHS's Sensitive Locations Memos

It has been longstanding policy of the U.S. Department of Homeland Security (DHS) and the legacy Immigration and Naturalization Service (INS) to advise against immigration enforcement activities in “sensitive locations.”³⁶ This longstanding federal agency guidance was reiterated most recently in a 2011 ICE Sensitive Locations Memo³⁷ and 2013 CBP Sensitive Locations Memo.³⁸ Two limitations of these sets of memos are: (1) that they are solely instances of guidance that do not carry the force of law, and (2) the memorandums could be rescinded or modified at any time.

The ICE Sensitive Locations Memo lists several locations, including all schools (K–12, public, private, colleges, and adult/alternative schools) as “sensitive locations” where ICE should not conduct enforcement activity unless certain outlined exigent circumstances exist. ICE is also allowed to enter a school campus if a pursuit leads them onto campus. In a sensitive locations Frequently Asked Questions document, ICE clarifies that schools include “known and licensed daycares, preschools and other early learning programs ... as well as scholastic or education-related activities or events” and marked or known school bus stops, “during periods when school children are present at the stop.”³⁹ While apprehending, arresting, interviewing, searching, and surveilling a person are activities covered by the memo, there are several activities that are not covered and are thus allowed. These include “activities such as obtaining records, documents, and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, guarding or securing detainees, or participating in official functions or community meetings.”⁴⁰

Unfortunately, since Trump’s election, community members and advocates have reported incidents in which ICE has blatantly violated the spirit, if not the letter, of the Sensitive Locations Memo, including several incidents near schools, particularly during pick-up and drop-off hours.⁴¹ Taking together the uncertain future of these memorandums, their

³⁶ See, e.g., Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, “Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations” (10029.1, July 3, 2008); Memorandum from Marcy M. Forman, Director, Office of Investigations, “Enforcement Actions at Schools” (Dec. 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, “Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies” (HQ 807-P, May 17, 1993).

³⁷ See Memorandum from John Morton, Director, U.S. Immigration & Customs Enforcement, “Enforcement Actions at or Focused on Sensitive Locations” (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

³⁸ Memorandum from David V. Aguilar, Deputy Commissioner, U.S. Customs and Border Protection, “U.S. Customs and Border Protection Enforcement Actions At or Near Certain Community Locations” (Jan. 18, 2013), <https://foiarr.cbp.gov/streamingWord.asp?i=1251>.

³⁹ See *FAQ on Sensitive Locations and Courthouse Arrests* (U.S. Immigration & Customs Enforcement), <https://www.ice.gov/ero/enforcement/sensitive-loc>.

⁴⁰ *Id.*

⁴¹ See Andrea Castillo, “Immigrant Arrested by ICE After Dropping Daughter Off at School, Sending Shockwaves through Neighborhood,” *Los Angeles Times*, Mar. 2, 2017, www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html; Sheyanne Romero, “ICE Targets Man in Front of Visalia School,” *Visalia Times*, Mar. 31, 2017, www.visaliatimesdelta.com/story/news/local/2017/03/31/ice-targets-man-front-visalia-school/99894922/; Katherine Landergan, “Grewal Questions ICE Tactics After 2

lack of enforceability, and the fact that they have likely been violated in the past year and a half, the memorandums on their own are not the strongest leg to stand upon in crafting a protective policy at the school level. As a result, several schools cite to the memorandums in the “whereas” portions of their safe zone resolutions but do not rely on them heavily in the “wherefore” action portions. For example, the Los Angeles Unified School District’s resolution relies on the ICE Sensitive Locations Memo only in conjunction with Fourth Amendment protections to fortify its policy on visitors.⁴² See [section IV](#), below, for additional examples.

F. City, County, and/or State Laws and Guidance

Schools can also rely on city, county, or state laws and guidance that restrict or limit law enforcement cooperation with ICE and CBP. These laws and guidance may have direct and/or indirect implications in the K–12 and college settings. Local or state laws limiting local law enforcement entanglement with immigration enforcement may have a direct effect on a school if the school employs or contracts with local or state law enforcement on campus. Those officers interact directly with students and thus have a more immediate role in preventing those students or their private information from being handed to ICE or CBP in the course of a criminal or civil investigation.

Local or state laws may have an indirect, but still critical, impact in school settings even if the school site does not host local or state law enforcement, because school discipline policies can serve as an entry into the school-to-prison-to-deportation pipeline. Local or state laws that support schools in limiting the involvement of outside law enforcement in school discipline matters can help ensure that students are not at risk of entering that pipeline in the first place.

Growing advocacy efforts have pushed for state and local laws that do both — restrict entanglement between local law enforcement and immigration enforcement, as well as preserve certain designated “safe spaces,” including schools, from immigration enforcement. For instance, California’s SB54, signed into law in October 2017, both disentangles local law enforcement from federal immigration activities and creates safe spaces in public schools, health centers, libraries, and other public spaces.⁴³

Several cities and counties already had adopted ordinances that limit police-immigration entanglement before the 2016 presidential election. For example, in 1989, San Francisco passed a law that is still in effect today, which mandates:

Were Arrested Outside Schools,” *Politico*, Jan. 26, 2018, www.politico.com/states/new-jersey/story/2018/01/26/ag-calls-for-review-of-ice-arrests-outside-schools-217568; Chris Vaughan and Lisa Fernandez, “ICE Activity So Close to School Is ‘Ludicrous,’ Novato Superintendent Says,” Fox KTVU News, Mar. 15, 2018, www.ktvu.com/news/ice-activity-so-close-to-school-is-ludicrous-novato-superintendent-says; Dianne Solis, “U.S. Citizen Kids Face the Deportation of Their Immigrant Parents,” *Dallas News*, (Apr. 5, 2018), www.dallasnews.com/news/immigration/2018/04/05/deported-us-citizen-kids-face-loss-immigrant-parents.

⁴² L.A. Unified Immigration Resolution of May 9, 2017: Reaffirmation of Los Angeles Unified School District Schools as Safe Zones for Students and Families Threatened by Immigration Enforcement (Ms. García, Dr. Rodriguez, Resolution No. 093-16/17), <https://www.documentcloud.org/documents/3711265-May-9-2017-Immigration-Resolution.html>.

⁴³ California Values Act, 2017 Cal. Legis. Serv. ch. 495 (S.B. 54) (West).

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.... [N]o officer, employee or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status.⁴⁴

This city law prohibits any San Francisco public school officials who are “officer[s] or employee[s] of the City and County of San Francisco” from using any money or “resources” to help ICE or collect information regarding immigration status. Hartford, Conn., passed a similar ordinance in 2008.⁴⁵ King County, Wash., also passed an ordinance in 2014 that prohibits local officials from honoring ICE detainer requests except under limited circumstances.⁴⁶

Many city and county governments have noticed the pervasive fear in their communities after the election and have since passed or reaffirmed their promises to safeguard their immigrant residents' constitutional rights. For example, the Hudson, New York, city council and mayor passed a resolution on March 21, 2017, that forbids city government employees and Hudson police from inquiring about immigration status or assisting in immigration enforcement.⁴⁷ To the extent that city employees or the Hudson Police Department operate on K–12 or college campuses, the Hudson ordinance would ensure that students, staff, and workers are not singled out for immigration enforcement, and those schools could reference the Hudson ordinance in their own safe zone or “sanctuary” policies. Similar city ordinances that could lend protection to students on campus have been passed or reaffirmed since the 2016 presidential election in cities including Ann Arbor, Mich.;⁴⁸ Beaverton, Ore.;⁴⁹ Chicago,

⁴⁴ S.F. Admin Code § 12H.2.

⁴⁵ City of Hartford Ord. No. 20-08, 8-11-08 (July 23, 2008), www.hartford.gov/images/TownClerk/immigration-status.htm.

⁴⁶ King County Council Ordinance No. 2014-0297.2 (Sept. 5, 2014), <http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=1830090&GUID=6B280C2E-BoD8-460D-850B-226F99DF403F&Options=&Search>.

⁴⁷ See City of Hudson, Resolution No. 5, Affirming the City of Hudson as a Welcoming and Inclusive City (Mar. 21, 2017), <http://cityofhudson.org/content/MeetingCategories/View/1:field=meetings:/content/Meetings/View/370:field=documents:/content/Documents/File/3700.pdf>.

⁴⁸ Ann Arbor City Council Ordinance No. ORD-17-02, Solicitation of Immigration Status (Apr. 3, 2017), <http://a2gov.legistar.com/LegislationDetail.aspx?ID=2962689&GUID=4B274497-3928-499C-A212-80BF9596FBBB&Options=&Search>.

⁴⁹ City of Beaverton Ord. No. 17015, A Resolution Declaring the City of Beaverton a Sanctuary City (Jan. 10, 2017), http://beaverton.granicus.com/MetaViewer.php?view_id=2&clip_id=1718&meta_id=89444.

Ill.;⁵⁰ Hillsboro, Ore.;⁵¹ and Seattle, Wash.,⁵² among many others (including over a dozen in California alone). For more information on local government “sanctuary” policies, see NILC’s *Sanctuary City Toolkit*, www.nilc.org/sanctuary-city-toolkit/.

State laws can also provide authority for schools to enact protections for immigrant students or other students who may be susceptible to targeting by law enforcement. For example, Oregon state law has for nearly 30 years prohibited using state and local resources to enforce federal immigration law,⁵³ and Beaverton’s ordinance cites to this law.

For years, state legislatures have grappled with the issue of police-immigration entanglement that hinders public safety, and some have recently passed “trust” policies that would limit that entanglement. For example, on May 31, 2017, the Illinois legislature passed SB 31, or the Illinois Trust Act, which Governor Rauner signed into law on August 28, 2017. The Illinois Trust Act bars local and state police in Illinois from honoring ICE detainer requests and ICE warrants.⁵⁴ California’s SB 54, or the California Values Act, is another example.⁵⁵

States including California, New Jersey, Oregon, and Pennsylvania, also have passed laws barring schools from collecting immigration-related information from students.⁵⁶ The New Jersey legislature recently passed and filed with the state’s secretary of state a bill to protect the data of unauthorized immigrants beyond the protections of FERPA and to reaffirm that

⁵⁰ See Statement of Mayor Rahm Emmanuel, NPR News (Nov. 14, 2016) (“To all those who are, after Tuesday’s election, very nervous and filled with anxiety ... you are safe in Chicago, you are secure in Chicago and you are supported in Chicago. Chicago has in the past been a sanctuary city.... It always will be a sanctuary city.”); City of Chicago Ord. No. 2-173, Welcoming City Ordinance (Mar. 29, 2006, amended on Sept. 12, 2012),

[http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il).

⁵¹ Hillsboro City Council Ordinance No. 2552, A Resolution Declaring the City of Hillsboro a Sanctuary City as Defined by this Resolution (Mar. 7, 2017), <https://www.hillsboro-oregon.gov/home/showdocument?id=11566>.

⁵² Seattle City Council Res. No. 31730 (Feb. 2, 2017), <http://seattle.legistar.com/View.ashx?M=F&ID=4965933&GUID=3D0419A9-A760-40BD-B548-2DB1887384CA>.

⁵³ Ore. Rev. Statute Vol. 5 § 181 A.820 (2015).

⁵⁴ Ill. Gen. Assembly, Bill Status of SB31, Illinois Trust Act (passed May 31, 2017; signed into law Aug. 28, 2017), www.ilga.gov/legislation/BillStatus.asp?GA=100&DocTypeID=SB&DocNum=31&GAID=14&SessionID=91&LegID=98874.

⁵⁵ *Supra* note 43.

⁵⁶ See Educ. Code, Cal. Stat. Tit. 1, Div. 1, Part 1, Ch. 2, §§ 200, 220, 234.1, 234.7 (Cal. 2018), bill text available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB699; 2002 *Changes to INS Regulations Create No New Obligations for Schools* (New Jersey Dept. of Educ.), www.state.nj.us/education/news/2002/1021imm_a.htm (“Accordingly, school districts are still prohibited from requiring students to disclose or document their immigration status, making inquiries of students or parents that may expose their undocumented status or engaging in any practices that ‘chill’ or hinder the right of access to public schools.”); Pa. Code § 11.11(d) (2009) (“A school may not inquire regarding the immigration status of a student as part of the admission process.”). See also Cal. Educ. Code § 48204.6(a) (“Any school district that is adjacent to an international border may accept a wide range of documents and representations from the parent or guardian of a pupil as reasonable evidence that the pupil meets the residency requirements for school attendance in the school district as set forth in Section 48204.”).

schools are a safe place for students.⁵⁷ In August 2017, Oregon enacted HB 3464,⁵⁸ which limits inquiries and disclosure of information for immigration enforcement purposes and requires the state attorney general to publish model policies that limit, to the fullest extent possible consistent with state and federal law, immigration enforcement at public schools, public health facilities, courthouses, public shelters, and other public facilities operated by a public body. California's AB699, passed in October 2017, creates similar protections for students' information in public schools.⁵⁹ Similar bills are pending in other states.

As discussed above, although the federal FERPA law's exceptions and exemptions threaten to swallow the rule with regard to protecting students' personal information, FERPA's protections are only a floor. State laws can include greater protections than FERPA does and can be tailored specifically to prevent unnecessary information from being collected or recorded. State laws can also ensure that information collected about students or their families is disclosed only for the purpose of administering the educational programs for which the information was collected. For instance, in 2009 New York City's Board of Education passed a FERPA-type policy that remains in effect and provides greater protection to student information than under the federal law by including place and date of birth as protected information (whereas under FERPA that is considered "directory information").⁶⁰

In addition, some state laws allow schools to require certain documents from children, whereas other states do not allow schools to require such documents. For example, in California, state law requires schools to accept certain documents for enrollment that do not present the risk of chilling enrollment for reasons related to immigration status, including rental property leases, pay stubs, or a declaration of residency from the parent.⁶¹ In North Carolina and Kansas, by contrast, educators are permitted to require a birth certificate as proof of age and identity.⁶² Since a foreign birth certificate may be used as evidence of alienage in deportation proceedings, being forced to produce this birth certificate (as opposed to other evidence of age, such as a vaccination record) could prejudice the student or the student's parents if immigration agents have access to that information. It is important to identify whether your state has such a requirement on the books and to advocate to ensure that students and their parents can present alternative documents, and where necessary repeal any law that conflicts with the principles established by *Plyler*.

Finally, some states' attorneys general or departments of education have issued guidance specific to or including how to make educational spaces "safe zones" throughout the state.

⁵⁷ See S. Res. 134, 217th Leg. (N.J. 2016), <https://legiscan.com/NJ/text/SCR134/id/1435384>.

⁵⁸ H.B. 3464, 79th Gen. Assemb., Reg. Sess. (Oreg. 2017).

⁵⁹ A.B. 699, 2017 Cal. Legis. Serv. ch. 493 (West).

⁶⁰ See *Confidentiality and Release of Student Records; Records Retention* (New York City Dept. of Educ., Regulation of the Chancellor, No. A-820, June 29, 2009), <http://schools.nyc.gov/NR/rdonlyres/86A506E3-C950-4410-8A5B-4AC4068E735C/o/A820CombinedPDFs62909.pdf>.

⁶¹ See Xavier Becerra, *Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues* (California Attorney General's Office, April 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>, pp. 7-8 (instructing schools on how to implement California's AB 699).

⁶² N.C. Gen. Stat. § 115C-364(c); Kan. Stat. Ann. § 72-53, 106.

Those states include California,⁶³ Massachusetts,⁶⁴ Michigan,⁶⁵ New York,⁶⁶ and Washington.⁶⁷ Schools located in those states can and should rely on their states' guidance in crafting school resolutions, and others should monitor state policy and advocate for their states' attorneys general and departments of education to pass similar guidance.

G. Additional Elements of School Policies

In addition to the options for action explored above, schools can take steps to ensure that their “sanctuary” policies are as successful as possible. For example, schools can ensure that if they have a security or police presence on campus, those agencies and personnel agree to honor the letter and spirit of the school’s policies so students are not fearful of being put at risk of deportation. Part of this is a commitment not to involve outside law enforcement, including through information sharing, to manage student disciplinary matters. A recent example of a failure to keep student discipline in-house demonstrates how much is at stake: In late 2017, a Boston Public Schools (BPS) high school student was deported because school personnel shared information on a cafeteria incident involving the student with a regional consortium of law enforcement that includes ICE. On June 21, 2018, several civil rights and education groups filed a Public Records Act lawsuit asking the Massachusetts Superior Court to mandate that BPS release documents, including more information on the incident and the number of other school incident reports that BPS has provided to ICE.⁶⁸ One day after the lawsuit was filed, the district’s superintendent resigned.⁶⁹

Another way that schools can increase the efficacy of “sanctuary” policies is by creating centers for students to gather and receive support and information. In 2015 the University of California at Davis created the AB540 and Undocumented Student Center to provide academic, emotional, and legal counsel to undocumented students.⁷⁰ Many other colleges have created Dream Resource Centers that provide similar resources.

⁶³ Xavier Becerra, *supra* note 61.

⁶⁴ Maura Healey, *Attorney General Guidance: Rights and Obligations of Schools in Response to ICE Requests for Access or Information* (Massachusetts Attorney General’s Office, May 18, 2017), <http://www.mass.gov/ago/docs/civilrights/ag-advisory-on-ice-access-to-schools-5-18-17.pdf>.

⁶⁵ Agustin Arbulu & Brian Whiston, *A Letter from Michigan Department of Civil Rights Director Agustin Arbulu and State Superintendent Brian Whiston* (Michigan Depts. of Education and Civil Rights, Mar. 31, 2017), www.michigan.gov/documents/mdcr/2017-03-31+MDE+and+MDCR+Joint+Letter_556183_7.pdf.

⁶⁶ Letter from Eric T. Schneiderman, Attorney General, and MaryEllen Elia, Commissioner of Education, State of New York, regarding U.S. Immigration and Customs enforcement (Feb. 27, 2017), www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf.

⁶⁷ Bob Ferguson, *Guidance Concerning Immigration Enforcement* (Washington State Office of the Attorney General, Apr. 2017), <http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/AGO%20Immigration%20Guidance.pdf>.

⁶⁸ See Complaint, Ctr. for Law & Educ., Inc., et al. v. City of Boston, et al. (Mass. Sup. Ct. June 21, 2018).

⁶⁹ See Emily Shugerman, “Boston Public Schools Superintendent Resigns Following Lawsuit Claiming District Shared Student Information with ICE,” *Independent UK*, June 26, 2018, www.independent.co.uk/news/world/americas/boston-public-schools-tommy-chang-resigns-lawsuit-ice-immigration-massachusetts-a8418451.html.

⁷⁰ Natalie Gross, “UC Center a ‘Sanctuary’ for Undocumented Students,” *Latino Ed Beat* (blog), Feb. 17, 2015, www.ewa.org/blog-latino-ed-beat/uc-center-sanctuary-undocumented-students.

Finally, several school districts' resolutions include a clause stating that the school board will provide training to all faculty and staff regarding the principles outlined in the resolution and will provide all faculty and staff with a copy of the resolution. This helps ensure that all employees of the school are aware of the policy and will know what to do if a law enforcement or immigration official appears. Having a centralized procedure that all staff understand can help ensure that students can continue to learn without disruption or fear and may be particularly effective in a K–12 setting. It is also helpful to make the resolution accessible on the school district or college's website for students and parents to review in multiple languages.

III. Taking a More Inclusive Approach to “Sanctuary”

When the term “sanctuary” is used, it should send a message that all students are welcome and can feel safe in their school environment. Many students and other community members who historically have been marginalized by institutional racism are advocating for schools to adopt a more inclusive approach to “sanctuary” and to create protections for a broader range of individuals in the school setting. These policy proposals have included provisions such as anti-bullying; a promise to aggressively pursue justice against police brutality that disproportionately affects Black students and other students of color; protections for Muslim students and against any form of religious discrimination; protections for LGBTQ students; and protections for workers at the school, among others.

One important component of these policies is addressing the school-to-prison (-to deportation) pipeline and criminal justice reform more broadly. While many safe zone policies prohibit campus police or employees from inquiring into immigration status or enforcing immigration law, people of color continue to be disproportionately criminalized and targeted by police. This targeting has created a pervasive sense of mistrust of law enforcement, including in school settings, and has fostered the conviction by many that police will not protect, but rather will harm, them. Especially where armed law enforcement officers are present as a campus police or school resource officer force, many students of color may not feel safe at school. A sanctuary policy that considers only the relationship between immigrant students and immigration enforcement may erase the experiences of other students who continue to feel daily discomfort and, in many instances, unfair treatment and oppression by campus police (or law enforcement officers who are called to campus). Students of color also suffer disproportionately from institutionalized bullying in the form of “zero tolerance” discipline policies, school searches, and other similar policies that funnel students into the school-to-prison and school-to-low-wage-jobs pipelines.⁷¹

To help address these concerns, a more inclusive sanctuary policy could adopt provisions that curb the use of law enforcement personnel in school disciplinary matters, including alternative means of deescalating and resolving conflicts that may arise on campus, and moving away from zero-tolerance discipline. It may also include a promise on behalf of the school administration to pursue justice aggressively when law enforcement engages in abuses

⁷¹ For more information on this phenomenon and suggestions to address it, see *Ending Institutionalized Bullying in Our Schools* (Desis Rising Up and Moving, Nov. 7, 2016), <http://www.drumnyc.org/institutionalizedbullying/>.

— including firing officers who are school or school district employees — for issues of racial profiling, unfair treatment, and police brutality incidents that disproportionately affect Black students and other students of color.

Another component of a more inclusive sanctuary policy is creating more protections for individuals who work at the school. This could include a reaffirmation of the school’s commitment to uphold workers’ rights as well as an effort to defend the Fourth Amendment rights of workers against all types of law enforcement, including immigration enforcement, on campus.

For an example of a school district that has worked toward adopting a more intersectional and inclusive safe zone policy, see San Francisco Unified School District’s most recent resolution.⁷²

IV. Model Resolutions

To view model resolutions, click on the hyperlinks below or copy the URLs (provided in the footnotes) into your Web browser’s address window:

- [K–12 Countrywide](#)⁷³ – drafted by NILC in partnership with several organizations
- [K–12 California](#)⁷⁴ – drafted by NILC in partnership with several organizations
- [Colleges Countrywide](#)⁷⁵ – drafted largely by NILC

The four common elements of these resolutions are:

- Limiting inquiries, and limiting the collection and recording of information about students and their families; limiting the sharing of student information for purposes not related to education
- Restricting immigration agents’ access to campuses
- Prohibiting campus security from collaborating with federal immigration authorities for the purposes of enforcement
- Providing resources and information for immigrant students and their families

V. Talking Points for Students and Teachers: K–12

Many educators and students have asked, “How can I encourage my school board to pass a sanctuary resolution?” Below are some talking points for students, teachers, and allies who are advocating for their schools to take steps to protect students. These talking points are geared toward K–12 advocacy.

⁷² *Undocumented, Unafraid and United Students Resolution* (San Francisco Unified School District, Resolution No. 171-10A1, May 23, 2017).

⁷³ www.nilc.org/campus-safe-zones-language-k-12/.

⁷⁴ https://docs.google.com/document/d/1ggE-TughS9BcRap9DkB2T2j3b1_EAXMzEICeqo-wYdU/edit.

⁷⁵ www.nilc.org/campus-safe-zones-language-college/.

Why is a School Safe Zone or “Sanctuary” Resolution Important?

From a human perspective:

- It is important that children *feel safe* in school, so they can focus, learn, and be productive and grow. A safe zone resolution makes sure kids can learn, grow, thrive, and be supported in completing their education.
- Children cannot learn and thrive unless they have a safe and welcoming school environment. If children are afraid that they, their family members, or their classmates will be deported, they will not be able to focus in school, or they will skip school.
- This has a *ripple effect*. If one child feels unsafe or threatened, others will feel unsafe and threatened too. This is especially true for younger children. Most younger children do not know their immigration status, and if their classmates are scared, they will be scared too. You can’t target one child without targeting all children in the classroom. Thus, you can’t protect one child without committing to protect all children.
- For teachers to fulfill their mission of *educating all kids*, the classroom must be a nurturing and safe space. Teachers cannot fulfill their mission if their students are afraid or if the environment is hostile. Law enforcement presence, bullying, and fear distract from and undermine education. A safe zone resolution helps ensure that teachers can focus on their mission of educating instead of managing fear and its ripple effects among their students.
- We all are connected, and we live and study together in the same communities and classrooms. Anything that harms one person is going to harm all of us — and will interfere with our progress.
- To establish a safe learning environment for all children, the school district must commit the material and psychological support necessary for their well-being. It should act to ensure that children and their families have access to resources that can inform and help protect them.
- Children are already concerned that immigration authorities may come to get them or their family members. The school district can and should take steps to assure children that their school is a safe place, that their information is confidential, and that the school will support them and their families to the best of their ability.
- It is important for the schools in the district to *invest in their students as human beings*, to commit to protecting them as much as the schools can under the law, and to believe in them. This resolution would do just that.

From a legal perspective:

- The U.S. Supreme Court (in the case *Plyler v. Doe*) has said that *all children must have equal access to a free K–12 education regardless of their immigration status*. Anti-immigrant sentiment on the federal, state, and local levels threatens that right, and it is within the school district’s legal right and obligation to affirm that its schools

are a safe and welcoming space for *all* students. When students are afraid to attend school because they or a family member are undocumented, their right to access school is chilled, which violates *Plyler*.

- In *Plyler*, the Supreme Court said that *schools have a special role* in ensuring that *all* children learn and develop. These children are the future of our nation.
- Using the ability to read and write as a core example, the Supreme Court demonstrated the harmful nationwide outcome if certain groups of children were denied the ability to learn.
- The U.S. Constitution and most state constitutions mandate that all individuals be treated equally, regardless of their race, ethnicity, national origin, and other protected characteristics.
- Students have the right to be free from warrantless searches or arrests, and schools should take those rights seriously and do what they can to make sure any law enforcement agency that comes onto campus abides by constitutional rules.
- If schools in the school district cooperate with ICE, they may be liable for violating students' constitutional rights. The Albuquerque Unified School District, for example, was compelled to pay a settlement to students after it cooperated with ICE. As a result of the lawsuit, Albuquerque passed a comprehensive "safe zone" resolution to protect its students.
- These recommendations for school districts are not only wise educational policies but are consistent with and intended to reinforce existing federal laws and constitutional rights.

From a practical perspective:

- If the school district has a safe zone resolution, it will ensure that teachers, faculty and staff consistently know what to do if a federal or state law enforcement official contacts them or attempts to enter campus. This structure will make everyone feel more at ease and maximize the protections schools can legally provide for students.
- The safer and more secure children feel, the better they will learn, develop, and prepare to contribute to the country's future.

VI. Talking Points for Students and Professors: College, University, and Adult School

Many educators and students have asked, "How can I encourage my college or university to pass a sanctuary resolution?" Below are some talking points for students and faculty who are advocating for their schools to take steps to protect students. These talking points are geared toward college, university, or adult school settings.

Why is a School Safe Zone or “Sanctuary” Resolution Important?

From a human perspective:

- It is important that students *feel safe* in school, so that they can focus, learn, and be productive and grow. A safe zone resolution makes sure college students can learn, grow, thrive, and be supported in completing their education.
- Students cannot learn and thrive unless they have a safe and welcoming school environment. If students are afraid that they, their family members, or their classmates will be deported, they will not be able to focus in school, or they will not attend school.
- This has a *ripple effect*. If one student feels unsafe or threatened, others will feel unsafe and threatened too. Thus, you can’t protect one student without committing to protecting all students.
- For professors to fulfill their mission of *educating all students*, the classroom must be a nurturing and safe space. Professors cannot fulfill their mission if their students are afraid or if the environment is hostile. Law enforcement presence, bullying, and fear distract from and undermine education. A safe zone resolution helps ensure that professors can focus on their mission of educating instead of managing fear and its ripple effects among their students.
- We all are connected, and we live and study together in the same communities and classrooms. Anything that harms one person is going to harm all of us and will interfere with our progress.
- To establish a safe learning environment for all students, the college/university/adult school must commit the material and psychological support necessary for their students’ well-being. It should act to ensure that students and their families have access to resources that can inform and help protect them.
- Students are already concerned that immigration authorities may come to get them or their family members. The college/university/adult school can and should take steps to assure students that their school is a safe place, that their information is confidential, and that the school will support them and their families to the best of their ability.
- The college/university/adult school setting is a unique one that depends on the open sharing of ideas and of students feeling comfortable expanding their horizons. If students are afraid of immigration enforcement on campus, that unique environment cannot be cultivated. Fear will destroy the open exchange of ideas and the ability for students to truly grow.
- It is important for colleges/universities/adult schools to *invest in their students as human beings*, to commit to protecting them as much as the schools can under the law, and to believe in them. This resolution would do just that.

From a legal perspective:

- The U.S. Constitution and most state constitutions mandate that all individuals be treated equally, regardless of their race, ethnicity, national origin, and other protected characteristics.
- Students have the Fourth Amendment right to be free from warrantless searches or arrests, and colleges and universities should take those rights seriously and do what they can to make sure any law enforcement agency that comes onto campus abides by constitutional rules.
- If colleges/universities/adult schools cooperate with ICE or CBP, they may be liable for violating students' constitutional rights.
- These recommendations for colleges/universities/adult schools are not only wise educational policies but are consistent with and intended to reinforce existing federal laws and constitutional rights.

From a practical perspective:

- If the school district has a safe zone resolution, it will ensure that professors, faculty and staff consistently know what to do if a federal or state law enforcement official contacts them or attempts to enter campus. This structure will make everyone feel more at ease and maximize the protections schools can legally provide for students.
- The safer and more secure students feel, the better they will learn and prepare to contribute to the country's future.

VII. Frequently Asked Questions

A. Question: I live in a place that has already passed a “sanctuary city” policy. How does that affect what the school does? Does this mean we do not need a sanctuary school policy?

Answer: Schools located in areas that already have sanctuary city policies are in a great position, because they can draw additional authority from local law to support their school policies. A local sanctuary policy does not eliminate the need for a sanctuary school policy, however, because students and workers at the school may not receive the same full range of specific protections on campus that a school can provide in a more immediate and tailored manner. For example, city policies may not prohibit the sharing of information with ICE. Moreover, if ICE or CBP enforcement activity takes place at a school, the school staff will be the first responders and can even prevent such activity from playing out, so a school-based policy is needed to ensure that on-the-spot protections are maximized.

B. Question: I live in a state or locality that has already passed an “anti-sanctuary city” policy that threatens to take funding away or criminally punish entities that have sanctuary policies. How does that affect what the school does? Does this mean we cannot pass a sanctuary policy?

Answer: It depends on the law or policy your state or locality has in place. Most state laws related to school funding direct the flow of federal money, which may not be distributed or withheld in an unconstitutional manner. You can attempt to craft a sanctuary school policy that does not violate the state or local law. In the alternative, if you believe the state law is unlawful or unconstitutional, you could create a sanctuary school policy that you believe may violate the state or local law and risk being sued by the state or locality or having to sue to recover funds that are taken away. If your school leadership is willing to be involved in litigation, you could potentially challenge the state or local law as violating the U.S. Constitution, your state constitution, or other laws. If you need support in starting a campaign or advocating with your school leadership, feel free to reach out to us at NILC.

C. Question: How do we pass a sanctuary resolution in our school?

Answer: In either K–12 or college settings, you can join your local immigrants’ rights and/or education coalition or organize a coalition and create a campaign for a sanctuary, safe-zone, or safe-haven resolution. In the K–12 setting, the advocacy would be primarily targeted toward the school board. The coalition you are part of could present a draft resolution and provide testimony to support it, and enlist support from students, parents, workers at the school, and other community members who support the proposal. In the college setting, advocacy would likely need to be directed toward the president or chancellor’s office and will likely be led by student groups on campus. If you need support in starting a campaign or advocating with your school leadership, feel free to reach out to us at NILC.

D. Question: I am a teacher at a K–12 school or college. I have some undocumented students who are afraid of ICE coming onto campus, and I want to help. If ICE came onto campus, could I direct the students to hide in a certain classroom or designated area to be safe from arrest?

Answer: If you did this, you would be vulnerable to federal harboring charges. Knowingly sheltering someone who is undocumented from immigration enforcement can give rise to this criminal liability. For more information, see *Legal Issues for School Districts Related to the Education of Undocumented Children*.⁷⁶

E. Question: I am a teacher or school employee, and I would like to help protect my students in the event of a raid or other enforcement activity on campus. What can I do to support my students?

Answer: There are several things you can do that would make a difference. Below are a few examples, but there are many ways to show your students support.

- You can post a sign on your office or classroom door that signals that it is a safe space and that students can come to you for support.

⁷⁶ Francisco M. Negrón Jr., et al., *supra* note 28.

- You can host or facilitate know-your-rights trainings for your students or their families on campus. Knowing one's rights can go a long way in protecting oneself from entering the prison or deportation pipeline.
- You can be active in the push for your school to pass a safe zone or sanctuary resolution and be active in the implementation of that plan once passed.
- You can encourage your school to create a resource center for students, including students who may be at risk if there is immigration enforcement activity on campus.
- You can also create and practice classroom solidarity plans that would be triggered if an ICE or CBP raid should occur in your classroom. For example, if an ICE agent entered the classroom and commanded students to separate into different groups by immigration status in order to arrest undocumented students, you could instruct the students to remain seated and let them know that the officer's instructions are not mandatory. This is a tactic that can also be used in workplace or other group-based settings. ICE instructions to separate people based on their status are coercive but not mandatory, and everyone has the right *not* to "speak" by voluntarily separating themselves into different groups.

F. Question: My school is afraid to adopt a sanctuary policy because of section 9 of President Trump's executive order on interior enforcement, which threatens to take funding away from entities that are sanctuaries.⁷⁷ How can I respond to this and encourage my school?

Answer: First, that section of the executive order has been temporarily blocked by a federal district court in the Ninth Circuit and therefore is unenforceable at this time. Second, the executive order on its face does not apply to schools, but rather only to law enforcement agencies or cities that pass sanctuary policies. Third, the executive order has since been narrowed through a memorandum Attorney General Jeff Sessions released on May 22, 2017.⁷⁸ In that memorandum, Sessions attempts to clarify that the executive order applies only to "federal grants administered by the Department of Justice or the Department of Homeland Security, and not to other sources of federal funding." Sessions further explains that a "sanctuary jurisdiction" under the executive order would refer only to "jurisdictions that 'willfully refuse to comply with 8 U.S.C. 1373.'" This narrowed policy was again found unconstitutional by the Ninth Circuit Court of Appeals.⁷⁹ With this narrowed interpretation of the executive order and subsequent finding of unconstitutionality, plus the fact that schools' sanctuary policies as outlined in this practice advisory do not violate section 1373, it is exceedingly unlikely that the executive order would be applied to schools. Therefore, your school should not be at risk of losing funding under that executive order if it instituted a sanctuary policy.

⁷⁷ See *Understanding Trump's Executive Order Affecting Deportations and "Sanctuary" Cities* (NILC, Feb. 24, 2017), www.nilc.org/exec-order-deportations-sanctuary-cities/.

⁷⁸ Memorandum from Jeff Sessions, U.S. Attorney General, "Implementation of Executive Order 13768, 'Enhancing Public Safety in the Interior of the United States'" (May 22, 2017), <https://www.justice.gov/opa/press-release/file/968146/download>.

⁷⁹ See *San Francisco v. Trump*, Nos. 17-17478, 17-17480, 2018 WL 3637911, __F.3d__ (9th Cir. Aug. 1, 2018).

G. Question: As a school administrator or board of education member, I know that our district/school already has many protections in place throughout our school code. Does this mean we do not need to pass a safe zone resolution?

Answer: No. Having several unconnected, vaguely or partially applicable policy provisions throughout the school code or bylaws is not sufficient. Indeed, many schools already have in place many of the policies described in the model resolutions but are not conceptualizing them — and therefore not implementing them — as a broader sanctuary policy that protects the integrity of the educational environment, ensures that students feel safe, and promises to invest in and act on behalf of its students who are targeted for enforcement. A large part of these policies is successful implementation, and a policy comprised of several unconnected pieces is much harder to successfully implement. Another large part of this effort is reupping the school's commitment to its students, and drafting one coherent policy is a more effective way to communicate that commitment than having several unconnected provisions that are not specific to the needs of the students.

H. Question: If ICE or CBP comes to my school with an arrest warrant for a student or search warrant, can administrators make them wait outside or in a designated location while we verify the warrant?

Answer: Yes, you may ask them to wait while you assess whether the warrant is valid. If it is an administrative warrant, it does not authorize the agent to enter the premises to arrest the student. Even if it's a judicial warrant, it might not have the proper address or might have other deficiencies. You can ask ICE or CBP to wait while you try to get an attorney on site to verify the warrant. Regardless of the outcome, but especially if ICE or CBP does not comply with your request or forcibly enters the premises, you should carefully document what happens.

I. Question: As a school, we are a “sensitive location.” Does this protect us at all from a valid judicial search warrant? Or do we have to allow someone with that kind of warrant into our building?

Answer: No, this doesn't prevent ICE or CBP from entering the school if they have a valid judicial search warrant. This is where the school plan would come into place, to minimize the amount of disruption this would cause and to ensure that ICE or CBP is following the school's protocol when they execute the warrant.