

PENNSYLVANIA IMMIGRATION AND CITIZENSHIP COALITION



WELCOMING SCHOOLS CAMPAIGN

Stephen and Sandra
SHELLER
CENTER *for*
SOCIAL JUSTICE

 Temple University
Beasley School of Law

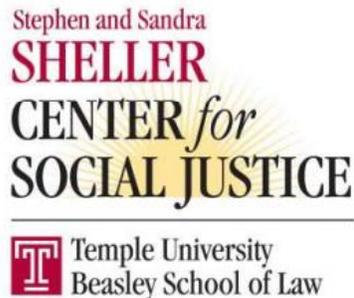


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The Social Justice Lawyering Clinic at the **Stephen and Sandra Sheller Center for Social Justice** is a student clinic at Temple University Beasley School of Law. Students at the clinic work firsthand on social justice issues that directly impact local communities, through legal representation, community education, and policy advocacy.



PICC's mission is to advance immigrants' rights and promote immigrants' full integration into society by advocating with a unified voice for greater public understanding and welcoming public policies throughout Pennsylvania.

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PURPOSE

This toolkit aims to provide students, parents, community members, and schools with the tools for affirming a school’s dedication to ensuring that all students—regardless of their immigration status—are welcome, safe, and protected in the school environment. We offer sample resolutions and policies that represent proactive steps that schools can take to keep children safe from immigration enforcement raids, protect students’ privacy, and affirm a commitment to inclusiveness.

In the wake of the recent presidential election—fueled by anti-immigrant rhetoric—immigrant communities have been experiencing an increase in anxiety, fear, and uncertainty. Given that the current administration’s immigration enforcement policies are not yet clear, the resulting uncertainty has overwhelmed communities.

Yet the recent election has also led to a feeling of empowerment among students and parents. As one advocate said, *“the focus is now on determination and resistance, and figuring out how we can make students feel more empowered to take action.”*¹ To ensure that schools remain a safe learning environment for all children, this project aims to help bring community members together to take a stand to protect immigrant students and their families.

“Some of my worries for immigration are people separating from family. My grandfather was an immigrant when he came to the United States, and he had to make a new life and new family. He was all alone, and that worries me a lot for people. Kids need their moms and dads.”

-10th Grader, Age 16

To create this toolkit, we spent months interviewing students, parents, advocacy leaders, teachers, and school board members across the state of Pennsylvania.² Our goal was to construct a toolkit that reflected our interviews with those most impacted by the current climate. Many felt that it is extremely important for schools to stand up and advocate for the safety and security of their immigrant students and families. Further, formal action by schools—whether in the shape of a school board resolution or policy statement—is an incredibly powerful tool to ensure that students feel safe and welcome in their

learning environment. It is our hope that this toolkit starts fruitful discussions between school administrators, school board members, teachers, students, and parents.

Schools are incredibly important spaces within a community. A school’s statement, therefore, affirming its stance to protect and welcome immigrant students and families may act as a launching pad for thinking about these protections more broadly. Schools can serve as a space where all students across Pennsylvania feel safe and welcomed, regardless of their race, religion, nationality, sexuality, gender, or immigration status. As one student put it: *“SUPPORT US. EMPOWER EACH OTHER!”*

How to Use This Toolkit

We have designed this toolkit as a guide for further empowering students, community members, and advocates to urge their schools to take a positive and proactive stand in support of the immigrant students and families within their communities. The first section contains Frequently Asked Questions (FAQs), which respond to concerns about immigrant students and families’ rights in school. The next section includes examples of how a school can take action through formal steps that affirm its commitment to its entire community. It provides a sample school board resolution and policy statement. The third section provides additional resources for immigrant students and families, including information about how to find legal assistance and connect with community-based organizations. Finally, the last section provides a more detailed legal explanation about the laws that apply to schools and copies of a school board resolution and policy statement that can be given directly to school board members.

FREQUENTLY ASKED QUESTIONS

Have questions about immigration and schools? This section provides answers to common questions community members have about how they can protect their rights and help their schools do the same.

(1) *Can schools discriminate against immigrant children?*

No. All students, regardless of their immigration status, have the right to attend public school.³ Schools are required to make sure all students have equal access to educational resources.⁴ This includes providing services to students who are English Language Learners and addressing the bullying of students based on race or national origin.

(2) *Do teachers, school administrators, or school boards have to enforce immigration laws?*

No. School officials and teachers are not required to and cannot be forced to enforce immigration laws.⁵ They are also prevented from asking about the immigration status of students and from discriminating in any way against immigrant students.⁶

(3) *Can schools share a student's private information with Immigration and Customs Enforcement (ICE)?*

No. Federal law prohibits schools from sharing information, including students' or parents' immigration status, with ICE officials. Schools may only release information if parents agree, or ICE has a subpoena or court order.⁷

Who is ICE?

U.S. Immigration and Customs Enforcement (ICE) is a federal agency that enforces immigration law.

(4) *Is ICE likely to enter public schools?*

No. ICE’s current policy (called the “Sensitive Locations” Memo) states that ICE will not conduct enforcement activities in schools, at educational activities, or at school bus stops.⁸

(5) *What if ICE ignores their policy not to enter “sensitive locations”?*

Contact the ICE Detention Reporting and Information Line at (888) 351-4024 or email ERO.INFO@ice.dhs.gov. You can also file a complaint at www.ice.gov/webform/ero-contact-form.

“I am worried that my community will be targeted by ICE. I don’t want to leave this place that I now call my home, and I don’t want to be separated from my family.”
– 9th Grader, Age 14

(6) *Can schools take steps to protect its students from ICE?*

Yes. Local school boards can pass a resolution or adopt a policy statement that your school will protect students against ICE enforcement activities and not share student or parent information with ICE. Schools can also create plans in case of ICE enforcement against students. Samples are included in the “Taking Action” section of this toolkit.

(7) *Can ICE be kept out of the classroom?*

Yes. As long as ICE does not have permission to enter the school building, they also do not have permission to enter the classroom. Passing a resolution, policy statement, or having a school protocol is important because it sets out a specific plan in case ICE comes to your school.

(8) *Does ICE need a warrant to speak to a student or parent in a public place?*

No. ICE has the authority to approach and question people in public spaces without a warrant.⁹ However, people still have the right to remain silent and to contact an attorney.¹⁰

(9) Is there anything else the school district or schools can do to make parents and students feel safer?

Yes. Besides passing a resolution or policy statement,¹¹ schools can maintain open communication with families about the school’s policies concerning ICE. Schools can partner with community-based organizations and legal nonprofits to provide training and services to families who need additional help.

“Protecting the lives and well-being of immigrants should be a priority.”
– 12th Grader, Age 17

(10) What planning should students or parents do in case of deportation?

Parents should update all school forms that indicate who is allowed to pick up their children from school and ensure student medical waivers are up-to-date. When it comes to long-term plans, local immigrant support organizations can help. A list of some

organizations can be found on page 15.

(11) What can schools do if students’ parents are detained?

It is important for schools to follow the families’ detention/deportation plan, and provide a safe place for students to wait if their parent or sibling has been detained. Schools should also find out if there is a local rapid response team for immigration raids, which can provide additional support to the student and their family.

(12) Where can parents and students find out more information about their immigration-related questions?

Take a look at the “Know Your Rights” page, on page 14, of this toolkit for information about other immigration-related issues.

TAKING ACTION

*This section shows you what actions community members and schools can take in order to ensure that immigrant students and families feel **safe and welcome** in their schools.*

Overview

Where can you start?

This toolkit! This section includes: (1) a sample school board resolution, (2) alternative language for a school board resolution, (3) a sample policy statement, and (4) a step-by-step guide on how to pass a school board resolution. Attached in the “Appendix” section are a legal memo, school board resolution, and policy statement that can be handed directly to your school board.

What is a school board resolution?

School board resolutions are guidelines, which set certain procedures and policies for how schools must operate. This means that when a school board passes a resolution, all local K-12 public schools in that district are required to follow it.¹²

“It makes me happy to know that good people care about our well-being and goals without even knowing us. Thank you!”

– 12th Grader, Age 18

What is a policy statement?

A policy statement is a non-binding public statement by the school board to the school district. It sets out standards, goals, and plans by the school board that it wants schools to take.

Why would a school want to consider implementing plans for dealing with immigration officials?

To keep students safe and ease the fears of students and parents who fear deportation. The school's central purpose is to provide a safe and welcoming environment for all of its students. A school board resolution that lays out plans for dealing with immigration officials will protect students and ensure that a school's federal and state obligations to their students are fulfilled.

“My worries aren't about myself. I worry about the families that are getting separated. There are many families hurting because of this, especially kids.”

– 9th Grader, Age 15

How is a school board resolution passed?

School boards have different procedures for passing resolutions. Contact your local school board and attend a couple of meetings to familiarize yourself with the process. Once you understand the process, it is time to talk to other parents, students, teachers, and community members to get your campaign started. See page 13 for tips.

“I am scared of ICE coming into my school, because that can affect the students and they won't feel safe going to school.”

– Anonymous Student

Does a school board have the power to pass this resolution?

Yes. A school board can adopt a policy resolution stating that it will not comply with ICE requests for information or allow ICE to enter the school without a court order or warrant. Similar resolutions have already been passed by over 60 school districts across the country, including Pittsburgh, PA.¹³

The school board's authority comes from:

- The Family Education Rights and Privacy Act (FERPA)
- The 10th Amendment of the U.S. Constitution
- ICE's "Sensitive Locations" Memo
- ICE's Federal Regulations

One of the primary roles of school boards is to set policy for the school district.

Affirming a school’s stance on anti-discrimination fits directly within this role.¹⁴ For a more detailed explanation of the laws that apply to schools, see the “Legal Memo” in the Appendix.

What if your school board will not pass a resolution?

Even if your school board is unwilling or unable to pass a resolution, they might be willing to publicly release a policy statement. While policy statements are not binding on local schools, it still shows that the district is taking an affirmative position on protecting all of its students, regardless of their immigration status. You can also work with local school administrators to have individual schools issue policy statements. This will show the school board that there is broad support for these policies.

*“Activate the
Community.”*

-School Board
Member

Sample “Welcoming Schools” Resolution

Whereas, The [insert School Board] is committed to the success of all students, regardless of immigration status;

Whereas, Any disruptions by ICE in and around public schools would create a severe disturbance to the learning environment and educational setting for all students; and

Whereas, This School Board recognizes that fearful students and parents run counter to the policy of providing a safe place for learning to all children;

Whereas, The United States Supreme Court in *Plyler v. Doe* (1982), guaranteed all people, regardless of immigration status, the right to a K-12 public school education;

Whereas, the Family Education Rights and Privacy Act (FERPA) protects the privacy of student education records and prevents schools from releasing student information without consent; and

Whereas, ICE’s 2011 policy states that it will not conduct immigration enforcement activities in any “sensitive location,” including K-12 public schools;

Whereas, There is no written state or federal law that mandates local school districts to assist ICE in the enforcement of immigration laws; and

Whereas, Under the Tenth Amendment, the federal government cannot coerce localities to enforce immigration laws;

THEREFORE, BE IT RESOLVED THAT:

1. All schools within this district will be a welcoming place for students and families to seek help, assistance, information, and safety if faced with fear and anxiety about immigration enforcement.
2. Information about this resolution will be shared by schools to all faculty, parents, and students in multiple languages. Schools are also tasked with

training employees on how to implement these policies. For parents and students who do not speak English, schools will provide appropriate language access services to ensure parents and students are aware of how this policy is being implemented and what it means for them.

3. Any request by ICE for student information from any K-12 public school will be denied. Such request will be sent to the Superintendent who, along with the School District's General Counsel (or the Law Department), will review the request and make a final decision on the matter. Information about students will not be shared unless affirmatively required by federal law.
4. Any request by ICE to have access to a school will be immediately directed to the Superintendent who will, along with the School District's General Counsel (or the Law Department), make a decision as to whether or not to grant the ICE official entry into the school. The ICE official must: (1) present their credentials, (2) have the proper judicial warrant, and (3) receive written authority from the Superintendent to enter any school.

RESOLVED this ____ day of _____, 2017

Alternative Language for a “Welcoming Schools” Resolution

The numbered paragraphs, at the end (numbers 1–4) of the sample “Welcoming Schools” Resolution, outline what a school is required to do. Given that all school districts are different, we offer multiple options for this language. This alternative language would be placed in the numbered paragraphs, after “THEREFORE, BE IT RESOLVED THAT,” at the end of your school board resolution.

Here are some choices:

1. School employees will not inquire into the immigration status of students and parents, nor will they report any student’s purported immigration status to ICE.
2. The Superintendent shall ensure all teachers, school administrators, and other staff are trained on how to implement this policy. Notification in multiple languages will be distributed to families to fully inform them of their rights in this District.
3. The Superintendent, along with other Administrators, will partner with community-based and legal services organizations to create a “Detention/Deportation Plan” to outline what the school and surrounding community will do if students or parents are targeted by ICE.
4. The Superintendent will, in good faith, begin to create physical spaces on school grounds for students and families to gather. These spaces will have information for parents and students regarding immigration issues and immigrant rights.
5. The Superintendent is encouraged to increase partnerships with local community-based organizations and legal services organizations to provide resources for families facing detention and deportation.

Sample Policy Statement

Statement From [School Board/District] to Parents, Students, Families, and Schools

[State] – This School District is committed to providing a safe and welcoming place for all K-12 students to learn and grow. We have a legal and moral obligation to provide a quality education to all of the students within our community. Such goals cannot be met with threats from U.S. Immigration and Customs Enforcement (ICE) upon our students and their families. This School District will not tolerate any disruptions to the safety and education its students deserve.

In this District, we take the responsibility for providing a quality free public education to all children very seriously. We stand with all students, regardless of immigration status. In addition, this District will not condone bullying, discrimination, or any sort of animus against its students, parents, and community members on the basis of race, religion, ethnicity, sexuality, gender, or immigration status. We will work to ensure that all students and parents feel welcomed and accepted by taking affirmative steps to address issues with bullying and to work with the community to provide language support for families who need it.

From this commitment, this District pledges to encourage its schools to:

1. Create and implement a “Deportation/Detention Plan” for schools and communities if students or parents are targeted by ICE.
2. Stop any teachers, administrators, or school employees from inquiring into a student’s immigration status.
3. Take all lawful steps to prevent the sharing of student information with ICE officials. Any requests by ICE for student information will be forwarded to the Superintendent’s Office for review, to ensure that the District abides by the Family Education Rights and Privacy Act (FERPA).
4. Not allow any individual or organization to enter a school site if the education setting would be disrupted by that visit. Requests by ICE to visit a school site will be forwarded to the Superintendent’s Office for review. No ICE official will be allowed on a school site without affirmative written consent from the Superintendent’s Office.

We believe that the diversity of our District is one of our community’s most significant assets. We value and will continue to support all of our students and families.

Steps to Pass a School Board Resolution

Don't do this alone!

Find others who are concerned about this issue and want to get involved. If there is a local community-based group that works with immigrant communities, see if they will offer support. To find a local immigration advocacy group near you, check out page 15.

“If principals were saying to their district, ‘We’d like this kind of policy,’ that would be powerful.”

– Temple Law
Professor

Do Your Research

- When and where does the School Board meet?
- How does the School Board pass resolutions or make policy statements?
- Who is on the school board? Does anyone know any school board members?

Decide On Your Message

Before you talk to the school board, make sure you agree on the message and talking points. These could include:

- Students should feel safe and welcome in school.
- Schools have a duty to provide a safe environment for all students to learn.
- The threat of ICE’s presence is a severe disturbance to students’ education.

Make an Action Plan

Once you have a few people ready to take action, decide on what types of actions you want to take. This could include:

- Attending school board meetings, asking to present the resolution, and having parents and students testify on why this is an important issue
- Organizing a letter-writing or similar campaign. Show the school board that people care about this resolution!
- Getting your schools involved. Administrators and teachers are powerful allies.
- Hosting community events and rallies.
- Finding allies in the community. Who else in the community cares about education and safe schools?

ADDITIONAL RESOURCES

Know Your Rights

What should I do if ICE officials approach me on the street or in public?

- First, ask, “am I free to go?”
 - **If they say YES** → Say, “I’d rather not speak with you right now.” Walk away.
 - **If they say NO** → Use your right to remain silent! Say, “I want to use my right not to answer questions” and “I want to speak to a lawyer.”
- If ICE starts to search your belongings, say, “I do not consent to a search.”
- Do not lie or show false documents. Do not flee or resist arrest.
- Do not answer questions about your immigration status or where you were born.
- Do not hand over any foreign documents such as a passport or consular IDs.

Can ICE enter my home to arrest me?

If ICE agents do not have a warrant signed by a judge, they cannot enter your home without permission from an adult. Opening the door when they knock does not give them permission to enter your home.

What can I do if ICE is inside my home to make an arrest?

- Tell them if there are children or other vulnerable residents at home.
- Ask them to step outside unless they have a warrant signed by a judge.
- If they come inside without your permission, say, “I do not consent to you being in my home. Please leave.”
- If they search rooms/items in your home, say, “I do not consent to your search.”
- If ICE is arresting you, tell them if you have medical issues or need to arrange for childcare.

What can I do to prepare?

1. If you or a loved one is deportable, have a plan!
2. Get a Know Your Rights Card. Find it here:
<http://paimmigrant.org/toolbox/know-your-rights/>
3. Attend a local Know Your Rights Session. Find it here:
<http://paimmigrant.org/event-calendar/>
4. Check out <http://paimmigrant.org/toolbox/know-your-rights/> for more information.

Everyone in the United States has constitutional rights—regardless of their immigration status.

Organizations Serving Immigrant Communities in Pennsylvania

Looking for help or looking to get involved?

Here is a list of some (but not all) organizations across Pennsylvania. They can help you advocate for immigrant rights, address your immigration needs, or provide you more information about the state of immigration today.

“People should have the opportunity to have an education, good health, and every bit of help”

– 9th Grader, Age 14

Region	Name of Organization	Phone Number	Type of Services
Allentown	Grupo de Apoyo e Integración Hispanoamericano	610-972-0736 610-428-3110	Community Engagement
Central PA	Movement of Immigrant Leaders in PA	484-602-5396	Community Engagement
Chambersburg	Franklin County Legal Services	717-262-2326	Legal Assistance
Gettysburg	Casa de la Cultura	717-253-0767	Community Engagement
Harrisburg	International Service Center	717-236-9401	Community Engagement, Legal Assistance
Harrisburg	Catholic Charities	717-564-7115	Community Engagement, Legal Assistance
Norristown	ACLAMO Family Center	610-277-2570	Community Engagement
Pittsburgh	Casa San Jose	414-343-3111	Community Engagement

Pittsburgh	Jewish Family and Children Services	412-422-7200	Community Engagement, Legal Assistance
Philadelphia	AFRICOM	215-475-8285	Community Engagement
Philadelphia	Aquinas Center	267-928-4048	Community Engagement
Philadelphia	Asian Americans United	215-925-1538	Community Engagement
Philadelphia	Ceiba	215-634-7245	Tax Assistance
Philadelphia	Community Legal Services	215-981-3700	Legal Assistance
Philadelphia	Esperanza Immigration Legal Services	215-324-0746	Legal Assistance
Philadelphia	HIAS PA	215-832-0900	Legal Assistance
Philadelphia	Juntos	215-218-9079	Community Engagement
Philadelphia	Nationalities Services Center	215-893-8400	Legal Assistance
Philadelphia	New Sanctuary Movement	215-279-7060	Community Engagement
Upper Darby	Centro de Apoyo Comunitario de Upper Darby	610-713-5954	Community Engagement
Statewide	Friends of Farmworkers, Inc.,	215-733-0878	Legal Assistance

APPENDIX

This section provides you with the documents you need to give to your school board members. It includes a legal memo that explains the laws that apply to schools, including why a school board has the power to pass a resolution. There is also a detachable sample resolution and policy statement.

Welcoming Schools Campaign: Legal Memo

IMMIGRATION STATUS & THE RIGHT TO PUBLIC EDUCATION

Q. Can a school deny access to education based on a student's immigration status?

A. No. All students, regardless of immigration status, have the right to public education.

Explanation. The U.S. Supreme Court has ruled that all students, regardless of their immigration status, have the right to attend public school (including elementary, middle, and high schools).¹⁵ Therefore, public schools cannot do things that would prevent immigrant or undocumented students from enrolling or from fully engaging in public school education. For example, schools are **prohibited** from:

- Asking students or their parents about their immigration status, for the purposes of enrollment
- Exposing students' or parents' immigration status without their permission
- Requiring social security numbers from all students

The U.S. Department of Education confirms that schools that take actions, which may "chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status" violate federal law.¹⁶

PROTECTION OF STUDENT/PARENT INFORMATION

Q. Can a public school refuse to turn student information over to U.S. Immigration and Customs Enforcement (ICE)?

A. Yes. Schools can refuse to turn over information about students and parents to ICE (with some limited exceptions).

Explanation. A federal privacy law, the Family Educational Rights and Privacy Act (FERPA), requires schools to keep information about students and parents private.¹⁷ This means that before a school can provide such information to anyone outside the school, the student/parent must give their consent in writing.¹⁸ Thus, FERPA prohibits **schools from providing information about students or parents' immigration status, or other information, to ICE officials without consent, unless** ICE has a subpoena or court order for such information. If ICE presents a school with a court order or subpoena requesting the information, schools should make a reasonable effort to contact the student and parent before the school discloses any information.¹⁹

FERPA allows schools to provide "directory" information to anyone outside the school,

which could include a student's name, address, phone number, date and place of birth, honors and awards, and dates of attendance.²⁰ Schools can only provide this information, however, if it has first notified parents and provided them with the opportunity to request that the information not be disclosed.²¹

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) POLICIES & PUBLIC SCHOOLS

Q. Will ICE conduct enforcement activities in public schools?

A. ICE's current "Sensitive Locations" policy restricts immigration officials from conducting enforcement activities in schools, places of worship, and hospitals. However, it is unclear whether ICE will continue to abide by this policy.

Explanation. ICE's "Sensitive Locations" memo is an internal policy used by ICE to enforce immigration law.²² The memo's purpose is to "ensure that . . . enforcement actions do not occur at[,] nor are focused on[,] sensitive locations such as schools and churches."²³ ICE defines "sensitive locations" as:

*Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop.*²⁴

Therefore, this policy means that ICE should not conduct enforcement activities (including apprehending, arresting, interviewing, searching, or surveillance) **in a school, at school bus stops, or at education-related activities or events.**²⁵ There are some exceptions but they require emergency circumstances or prior approval by ICE supervisory officials. ICE has openly and publicly stated that their policy prohibiting enforcement in sensitive locations is *currently in effect.*²⁶

Unfortunately, it is not clear at this time if ICE will continue to abide by this policy,²⁷ or if this policy will be changed in the future.²⁸

WARRANT REQUIREMENT

Q. Is ICE required to have a warrant to enter a public school?

A. Yes. When ICE attempts to enter a school, ICE is required to have a warrant signed by a judge.

Explanation. ICE's own regulations do not allow ICE officials to enter non-public spaces, such as a home, without a warrant.²⁹ Generally, whether a warrant is required depends on

how private the area is which ICE is seeking to enter.³⁰ The relevant question is *whether people in a given location have a reasonable expectation of privacy*. Public schools share many of the attributes of traditional private spaces³¹ because the general public does not have free access to schools. For example, schools require visitors to present identification, have a specific purpose for their visit,³² and be accompanied by a school administrator.³³ **Therefore, public schools administrators are likely able to prevent immigration officials from entering school grounds if they do not have a warrant.**³⁴ If ICE does have a warrant, the warrant must be a “true warrant” or “judicial warrant,” which is issued and signed by a neutral magistrate or judge.³⁵ Since ICE cannot use an “administrative warrant” (Forms I-200 and I-205)³⁶ to enter non-public spaces, such as a home or business facility, it also should not be able to use one to enter a public school.³⁷

However, ICE *does* have the authority to approach and question individuals in spaces which are generally accessible by the public without a warrant.³⁸ Spaces where ICE does not need a warrant include the street or sidewalk, or public spaces, such as a restaurant or store.

LOCAL SCHOOL DISTRICT AUTHORITY

Q. Are public schools required to enforce immigration laws?

A. No. School administrators and campus police officers have no duty to enforce immigration laws.

Explanation. Public schools (including campus police officers and city police officers that are stationed in public schools) are not required, nor can they be forced, to enforce federal immigration laws.³⁹ Based on Supreme Court decisions, the federal government is prohibited from forcing local officials to help enforce federal immigration laws.⁴⁰ Additionally, no federal or Pennsylvania law requires local school districts or schools to assist ICE in the enforcement of immigration laws.⁴¹

Q. Do local school boards have the authority to pass the type of resolution in the Welcoming Schools Campaign Toolkit?

A. Yes. Local school boards have the authority to take affirmative steps to ensure students’ safety.

Explanation. In Pennsylvania, the state constitution created a system of free public education,⁴² and recognizes schools districts as a “unit of local government.”⁴³ School boards “serve as local legislative bodies” or local governments for the public schools.⁴⁴ As part of its role, a school board has the authority to set policy for its schools, which includes the protection and safety of its students.⁴⁵

Since there are no federal or state laws restricting school boards from adopting the resolution in the Welcoming Schools Campaign toolkit, a school board is free to adopt a

policy affirmatively stating that it will not comply with ICE's request for information or will deny entrance without a court order or warrant. Further, affirming a school's stance on anti-discrimination is properly within a school board's authority.⁴⁶

FEDERAL & STATE PREEMPTION

Q. Can the federal or state government stop funding public schools as a result of adopting this resolution?

A. It is unlikely that either the state or federal government would stop funding public schools.

Explanation. Currently, there are no local, state, or federal laws or regulations that would threaten the funding of K-12 public schools that decide to pass resolutions which limit what ICE can do. School Districts have been passing resolutions protecting undocumented students since 2009.⁴⁷

At the federal level, the majority of funding for schools does not come from the federal government.⁴⁸ In fact, about 45.6% comes from states and 37.1% comes from local governments.⁴⁹ Further, the constitution places limits on how the federal government can pull funding from the states.⁵⁰

At the state level, several legislatures have introduced bills that would affect funding for so-called "Sanctuary Campuses."⁵¹ Although there is not a uniform definition of what a "sanctuary campus" policy is, these bills generally target colleges and universities that have enacted policies that often require ICE to have warrants to enter the campus. States that have introduced bills targeting "Sanctuary Campuses" include Texas, Iowa, Pennsylvania, North Carolina, Ohio, Tennessee, Florida, Idaho, Colorado, Georgia, Virginia, Maine, and Alaska.⁵² However, it does not seem likely that such proposals would be expanded to K-12 public schools as they would completely defund public education for an entire school district. There are no examples of such legislative proposals around the country, even with school districts that have passed similar resolutions. Further, there may be legal challenges to such proposals, if they are enacted by the state.

“Welcoming Schools” Resolution

Whereas, The [insert School Board] is committed to the success of all students, regardless of immigration status;

Whereas, Any disruptions by ICE in and around public schools would create a severe disturbance to the learning environment and educational setting for all students; and

Whereas, This School Board recognizes that fearful students and parents run counter to the policy of providing a safe place for learning to all children;

Whereas, The United States Supreme Court in *Plyler v. Doe* (1982), guaranteed all people, regardless of immigration status, the right to a K-12 public school education;

Whereas, the Family Education Rights and Privacy Act (FERPA) protects the privacy of student education records and prevents schools from releasing student information without consent; and

Whereas, ICE’s 2011 policy states that it will not conduct immigration enforcement activities in any “sensitive location,” including K-12 public schools;

Whereas, There is no written state or federal law that mandates local school districts to assist ICE in the enforcement of immigration laws; and

Whereas, Under the Tenth Amendment, the federal government cannot coerce localities to enforce immigration laws;

THEREFORE, BE IT RESOLVED THAT:

1. All schools within this district will be a welcoming place for students and families to seek help, assistance, information, and safety if faced with fear and anxiety about immigration enforcement.
2. Information about this resolution will be shared by schools to all faculty, parents, and students in multiple languages. Schools are also tasked with training employees on how to implement these policies. For parents and students who do not speak English, schools will provide appropriate language access services to ensure parents and students are aware of how this policy is being implemented and what it means for them.
3. Any request by ICE for student information from any K-12 public school will be denied. Such request will be sent to the Superintendent who, along with the School District’s General Counsel (or the Law Department), will review the request and make a final

decision on the matter. Information about students will not be shared unless affirmatively required by federal law.

4. Any request by ICE to have access to a school will be immediately directed to the Superintendent who will, along with the School District's General Counsel (or the Law Department), make a decision as to whether or not to grant the ICE official entry into the school. The ICE official must: (1) present their credentials, (2) have the proper judicial warrant, and (3) receive written authority from the Superintendent to enter any school.

RESOLVED this ___ day of _____, 2017

Statement from the School Board Re: “Welcoming Schools”

[State] – This School District is committed to providing a safe and welcoming place for all K-12 students to learn and grow. We have a legal and moral obligation to provide a quality education to all of the students within our community. Such goals cannot be met with threats from U.S. Immigration and Customs Enforcement (ICE) upon our students and their families. This School District will not tolerate any disruptions to the safety and education its students deserve.

In this District, we take the responsibility for providing a quality free public education to all children very seriously. We stand with all students, regardless of immigration status. In addition, this District will not condone bullying, discrimination, or any sort of animus against its students, parents, and community members on the basis of race, religion, ethnicity, sexuality, gender, or immigration status. We will work to ensure that all students and parents feel welcomed and accepted by taking affirmative steps to address issues with bullying and to work with the community to provide language support for families who need it.

From this commitment, this District pledges to encourage its schools to:

1. Create and implement a “Deportation/Detention Plan” for schools and communities if students or parents are targeted by ICE.
2. Stop any teachers, administrators, or school employees from inquiring into a student’s immigration status.
3. Take all lawful steps to prevent the sharing of student information with ICE officials. Any requests by ICE for student information will be forwarded to the Superintendent’s Office for review, to ensure that the District abides by the Family Education Rights and Privacy Act (FERPA).
4. Not allow any individual or organization to enter a school site if the education setting would be disrupted by that visit. Requests by ICE to visit a school site will be forwarded to the Superintendent’s Office for review. No ICE official will be allowed on a school site without affirmative written consent from the Superintendent’s Office.

We believe that the diversity of our District is one of our community’s most significant assets. We value and will continue to support all of our students and families.

ENDNOTES

¹ Telephone Interview with advocate from local immigrant advocacy organization (Apr. 11, 2017).

² The following advocacy organizations were instrumental in compiling this information: VietLead, Education Law Center, Casa San Jose, Casa de la Culture, Padres Latinos, Church World Service Global, SEAMAAC, We are CASA, the Pennsylvania Youth Congress, Alianzas Latino Outreach, and Esperanza Immigration Legal Services.

³ However, school districts may require students to meet *bona fide residency requirements*. The U.S. Department of Education, though, has clarified that “inquiring into students’ citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district.” Office for Civil Rights, *Dear Colleague Letter from the Office of the General Counsel*, U.S. DEP’T EDUC. (May 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.

⁴ Plyler v. Doe, 457 U.S. 202 (1982).

⁵ AMERICAN COUNCIL ON IMMIGRATION, IMMIGRATION POST-ELECTION Q & A: DACA STUDENTS, “SANCTUARY CAMPUSES,” AND INSTITUTIONAL OR COMMUNITY ASSISTANCE 7 (2016), <http://www.acenet.edu/news-room/Documents/ACE-Issue-Brief-Immigration-DACA-Sanctuary-Campus.pdf>.

⁶ 22 PA CODE § 11.11(d) (2017) (“A school may not inquire regarding the immigration status of a student as part of the admission process.”); Plyler v. Doe, 457 U.S. 202 (1982).

⁷ 20 U.S.C.A. § 1232g (2012).

⁸ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, ENFORCEMENT ACTIONS AT OR FOCUSED ON SENSITIVE LOCATIONS (2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

⁹ 8 C.F.R. § 287.8(f)(4).

¹⁰ *Know Your Rights with ICE*, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/wp-content/uploads/2016/12/IDP-ICE-Raids-Flyer-ENG-Jan-27-2017.pdf> (last visited Apr. 29, 2017).

¹¹ See “Taking Action” for more on passing school board resolutions or policy statements.

¹² There are two types of public schools in Pennsylvania—those which are run by districts and those which are run by charter schools. When a school board passes a resolution for a particular district, all the K-12 schools are required to follow it. However, the charter schools that are located within that district are not bound by the same resolution. Interview with Len Rieser, Program Coordinator for the Sheller Center for Social Justice at Temple University Beasley School of Law, in Philadelphia, Pa. (Apr. 26, 2017).

¹³ See, e.g., Molly Born, *Pittsburgh Public Schools Declare Itself ‘Sanctuary’ Campus*, PITTSBURGH POST-GAZETTE (Jan. 25, 2017), <http://www.post-gazette.com/news/education/2017/01/25/Pittsburgh-Public-Schools-declares-itself-sanctuary-campus/stories/201701250214?pgpageversion=pgevoke>; Antoinette Konz, *JCPS School Board Enacts ‘Safe Haven’ Proposal to Protect Immigrant Students*, WRDB.COM (Feb. 7, 2017), <http://www.wdrb.com/story/34448614/jcps-school-board-enacts-safe-haven-proposal-to-protect-immigrant-students>.

¹⁴ *Pennsylvania School Boards*, PA. SCH. BDS. ASS’N

[https://www.sssd.com/cms/lib01/PA01001353/Centricity/Domain/20/PSBA -
New Board Members.pdf](https://www.sssd.com/cms/lib01/PA01001353/Centricity/Domain/20/PSBA-_New_Board_Members.pdf) (last visited Apr. 29, 2017).

¹⁵ Plyler v. Doe, 457 U.S. 202 (1982).

¹⁶ *Dear Colleague Letter from the Office of the General Counsel*, *supra* note 5.

¹⁷ 20 U.S.C. § 1232g (2012).

¹⁸ Family Policy Compliance Office, *Family Educational Rights and Privacy Act (FERPA)*, U.S. DEP'T EDUC., <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn> (last visited Apr. 8, 2017); Section 1232g(b)(1)(A)–(L) lists several exceptions to this broad policy. Schools are allowed to provide student information in the following circumstances:

School officials with legitimate educational interest; [o]ther schools to which a student is transferring; [s]pecified officials for audit or evaluation purposes; [a]ppropriate parties in connection with financial aid to a student; [o]rganizations conducting certain studies for or on behalf of the school; [a]ccrediting organizations; [t]o comply with a judicial order or lawfully issued subpoena; [a]ppropriate officials in cases of health and safety emergencies; and [s]tate and local authorities, within a juvenile justice system, pursuant to specific State law.

¹⁹ PAULINA ARNOLD ET AL., IMMIGRATION RESPONSE INITIATIVE, SANCTUARY CAMPUS FREQUENTLY ASKED QUESTIONS 12 (2017), <https://today.law.harvard.edu/wp-content/uploads/2017/02/Sanctuary-Campus-Toolkit.pdf> (*citing* 20 U.S.C § 1232(b)(1)(J)). Schools should follow this procedure unless the request for information meets narrow exceptions. While some may argue that 8 U.S.C. § 1373 prohibits schools from restricting official from voluntarily sharing information with ICE, no court has ruled on the issue, and a strong argument can be made that FERPA “ensure[s] the privacy of educational records notwithstanding. *Id.* at 13.

²⁰ Family Policy Compliance Office, *supra* note 18.

²¹ *Id.*

²² *Enforcement Actions at or Focused on Sensitive Locations*, U.S. IMMIGRATION & CUSTOMS (2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

²³ *Id.* at 1.

²⁴ *Sensitive Locations FAQs*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited Apr. 8, 2017) (emphasis added).

²⁵ This policy was also confirmed by statements made by Karyl Lang, acting as the director of the Office of Congressional Relations to the Department of Homeland Security: “Arresting fugitives at schools, hospitals, or places of worship is strongly discouraged, unless that alien poses an immediate threat to national security or the community.” Letter from Karyl Lang, director of the Office of Congressional Relations for the Department of Homeland Security, to Zoe Lofgren, U.S. Congresswoman (Mar. 14, 2007), *available at* <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/ICE-Warrants-Practice-Advisory.pdf>.

²⁶ *Sensitive Locations FAQs*, *supra* note 24.

²⁷ For example, it has already shown that ICE is willing to violate this policy. Several reports have indicated that ICE has arrested students at school bus stops, in violation of their own enforcement policy. *See, e.g.*, Ester Yu Hsi Lee, *ICE Agents Are Arresting Teens On Their Way to School*, THINKPROGRESS (Apr. 14, 2017), <https://thinkprogress.org/ice-agents-are-arresting-teens-on-their-way-to-school-4853613160>; Tavni Misra, *Are There Really Any Safe Spaces for Immigrants?*, CITYLAB (Aug. 18, 2016), <http://www.citylab.com/crime/2016/08/the-murky-promise-of-safe-spaces-for-immigrants/495584/>; Mark Price, *West Meck High Student Says ICE Agents Arrested Him at School But Stop*, CHARLOTTE OBSERVER (Jul. 1, 2016, 2:39PM), <http://www.charlotteobserver.com/news/local/article87169637.html>.

²⁸ ICE’s “Sensitive Locations” policy can be easily changed by the new administration. ICE may

also argue that as a policy statement it is nonbinding on the agency. *See* *Hudson v. Fed. Aviation Admin.* 192 F.3d 1031, 1034–35 (D.C. Cir. 1999); Charles A. Breer & Scot W. Anderson, *Regulation without Rulemaking: The Force and Authority of Informal Agency Action*, ROCKY MOUNTAIN L. FOUND., 2001, at 22–24 (“A policy statement that is really just a policy statement . . . simply indicates the agency’s leaning, and is not binding.”).

²⁹ 8 C.F.R. § 287.8(f)(2) (2017) (“An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation . . . for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected.”).

³⁰ *See* *Minnesota v. Carter*, 525 U.S. 83, 88 (1998) (citing *Katz v. United States*, 389 U.S. 347, 360–361 (1967) (Harlan, J., concurring); *Rakas v. Illinois*, 439 U.S. 128, 143 (1978)) (“We have held that ‘capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.’”).

³¹ Often, public schools are treated as non-public spaces in other contexts, including First Amendment contexts. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988).

The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” Hence, school facilities may be deemed to be public forums only if school authorities have “by policy or by practice” opened those facilities “for indiscriminate use by the general public,” or by some segment of the public, such as student organizations.

Id. (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 47 (1983)); *see also* *The First Amendment in Schools: A Resource Guide*, NAT’L COALITION AGAINST CENSORSHIP (Jul. 10, 2013), <http://ncac.org/resource/first-amendment-in-schools>.

³² *See, e.g.*, Eric Slagle, *Western Pa. School Districts Implement More Ways to Maintain Students’ Safety* TRIBELIVE (Sept. 6, 2015, 11:17PM), <http://triblive.com/neighborhoods/yourmckeesport/yourmckeesportmore/9021141-74/security-district-visitors>; *ID Needed: New Visitor Management System*, GREATER LATROBE SCHOOL DISTRICT, <http://www.glsd.us/site/default.aspx?PageType=3&DomainID=1&ModuleInstanceID=906&ViewID=047E6BE3-6D87-4130-8424-D8E4E9ED6C2A&RenderLoc=0&FlexDataID=25571&PageID=1> (last visited Apr. 10, 2017).

³³ *See, e.g.*, School District of Philadelphia, Rule 907 (“School Visitors”) (2008), <http://www.phila.k12.pa.us/offices/administration/policies/907.html>; *see also* ARNOLD ET AL., *supra* note 19.

³⁴ *See* Memorandum from the Commonwealth of Virginia Superintendent of Public Instruction, Steven R. Staples, to Division Superintendents (Mar. 1, 2017), *available at* http://www.doe.virginia.gov/administrators/superintendents_memos/2017/059-17.shtml.

³⁵ *See* *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971); Jennifer M. Chacon, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1608 (2010) (“[T]he INA . . . requires government officials to have warrants or consent before an agent can enter a private home or worksite.”).

³⁶ 8 C.F.R. § 287.5(e)(2) (2017).

³⁷ At a training for ICE officials, organized by the Federal Law Enforcement Training Center (FLETC), a senior legal instructor with the FLETC legal division, made the following statements:

[T]he primary difference [between administrative warrants and true warrants] is that, unlike a criminal warrant issued by the federal court, a removal warrant does not authorize the ICE officer to enter into an [reasonable expectation of privacy] area to execute the warrant . . . the administrative warrant authorized the ICE officer to arrest the subject but not to enter into an [reasonable expectation of privacy] area such as his or her home unless consent is given. If the officer does not have consent to enter, even if the officer knows the person subject to the warrant is inside the home, the officer has no legal authority to enter the home pursuant to that removal order.

ICE Administrative Removal Warrants (MP3), FED. LAW ENF'T TRAINING CTR., <https://www.fletc.gov/audio/ice-administrative-removal-warrants-mp3> (last visited Apr. 29, 2017); *see also* Committee for Public Counsel Services, Immigration Impact Unit, *A Practice Advisory on ICE Use of Administrative Warrants and True Warrants in Immigration and Criminal Enforcement*, COMMONWEALTH OF MASSACHUSETTS (Feb. 19, 2013), <https://www.publiccounsel.net/iu/wp-content/uploads/sites/15/2014/07/ICE-Warrants-Practice-Advisory.pdf>. Additionally, Karyn Lang, acting as the director of the Office of Congressional Relations to the Department of Homeland Security, stated that “[w]arrants of removal are administrative in nature, and do not grant the same authority as a criminal search or an arrest warrant . . . [and] [o]fficers are required to obtain consent before they enter private residences or non-public areas of businesses.” Letter from Karyn Lang, *supra* note 25. *See also* Commonwealth v. Frodyma, 386 Mass. 434, 438 (Mass. 1982) (“An administrative inspection warrant, granted under a lesser standard of probable cause than is required in traditional criminal searches and seizures, cannot be used as a device to seize evidence for use in a criminal prosecution.”).³⁸ 8 C.F.R. § 287.8(f)(4) (2017) (“Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access . . . without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.”).

³⁹ AMERICAN COUNCIL ON IMMIGRATION, *supra* note 5, at 7; Family Policy Compliance Office, *supra* note 18. Section 287g of the Immigration and Nationality Act allows ICE to enter into formal agreements with state law enforcement, which provides the local law enforcement the authority to enforce federal immigration laws. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/factsheets/287g> (last visited Apr. 8, 2017); *The 287(g) Program: An Overview*, AMERICAN IMMIGRATION COUNCIL (March 15, 2017), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>. However, these cooperative agreements are *voluntary*, and as such, without such formal agreements, local law enforcement do not have this authority. *See id.*

⁴⁰ *See* Printz v. United States, 521 U.S. 898 (1997) (“[T]he Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs.”); New York v. United States, 505 U.S. 134 (1992); *see also* Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

⁴¹ Federal law does prohibit local schools from “conceal[ing], harbor[ing], or shield[ing]” individuals that are undocumented, which is a high standard that requires more than providing shelter (i.e., intent to conceal). 8 U.S.C. § 1324(a)(1)(A)(ii) (2012). However, passing the suggested school board resolution would not violate § 1324.

⁴² PA CONST. art. 3, § 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”).

⁴³ PA CONT. art 9, § 10.

⁴⁴ *Pennsylvania School Boards*, *supra* note 14.

⁴⁵ The school board's policy setting function is often seen as the "central responsibility of a board." *Id.* See also Edwin C. Darden, *The Importance of School Board Policies*, AM. SCH. BOARD J. (2008), <http://www.asbj.com/MainMenuCategory/Archive/2008/April/PolicytheLawandYou.aspx>. ("From a legal standpoint, school boards exist for one reason: to govern K–12 schools by exercising their power as a policymaking body."). Another explanation of school boards is:

By state legislative enactment, school boards are delegated power and authority to develop policies, rules, and regulations to control the operation of the schools, including system organization, school site location, school finance, equipment purchase, staffing, attendance, curriculum, extracurricular activities, and other functions essential to the day-to-day operation of schools within the district's boundaries.

Joseph Beckham & Barbara Klaymeier Wills, *Duties, Responsibilities, Decision-Making, and Legal Basis for Local School Board Powers*, STATE UNIVERSITY, <http://education.stateuniversity.com/pages/2391/School-Boards.html> (last visited Apr. 14, 2017). Additionally, schools have the legal duty to protect their students and ensure safety. See *School Safety and Security*, NAT'L SCH. BOARD ASS'N, <https://www.nsba.org/services/school-board-leadership-services/school-safety-and-security> (last visited Apr. 15, 2017) ("The primary responsibility of every school district is to ensure a safe and secure environment for students, staff and visitors.").

⁴⁶ School boards are specifically prohibited from engaging in illegal discrimination. *Pennsylvania School Boards*, *supra* note 14.

⁴⁷ COUNTY OF SAN FRANCISCO, Res. No. 99-22A2 (Sept. 22, 2009), <http://www.sfusd.edu/assets/sfusd-staff/board-archive/memberreso/kim%20maufas%20%20%20ICE%20REFUGE%20%20%209%2022%20093.pdf>.

⁴⁸ *10 Facts about K-12 Public Education Funding*, U.S. DEP'T EDUC., <https://www2.ed.gov/about/overview/fed/10facts/index.html?exp> (last modified Sept. 19, 2014).

⁴⁹ *Id.*

⁵⁰ See *supra* Part V of the Legal Memo for a discussion on local school district authority.

⁵¹ See, e.g., Amanda Reed, *Anti-Sanctuary Campus Bill Moves Forward, Pitt's Status Unclear*, PITTNEWS (Feb. 10, 2017), <http://pittnews.com/article/116765/top-stories/state-universities-odds-upcoming-anti-sanctuary-campus-bill/>.

⁵² See e.g., Kenric Ward, *Texas Governor Pledges to Sign Anti-Sanctuary Bill*, FOX NEWS POLITICS (Jan. 9, 2017), <http://www.foxnews.com/politics/2017/01/09/texas-governor-pledges-to-sign-anti-sanctuary-bill.html>. ("[T]he Republican governor [of Texas] pledged to sign Senate Bill 4, which would require municipalities to enforce migrant detainers at local jails and withhold state grants if they don't comply.").

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