

CALSA LETTERHEAD

To: CALSA MEMBERS

From: CALSA Board of Directors and Dr. David Verdugo, Executive Director

Re: **Safe and Supportive Schools For Immigrant Students and Student Members of Other Protected Classes**

As a community of diverse educational leaders, this message promotes our purpose of meeting the educational needs of the communities our members serve. CALSA advocates for quality education, equity, respect, and a student-focused approach to education. Across the United States, and in our home state of California, many students and families fear intimidation, hostility and/or violence brought by the changing climate that threatens them because of their ethnic, immigrant, religious, or other protected status. The uncertainty surrounding immigration policies, impacts students who specifically fear that their family, friends and community members will be deported and separated. The negative impact strikes directly at children's ability to focus on academics and forces them to face these enormous social and emotional pressures, at times without hope.

We remind you now of our purpose to serve our educational communities. **ALL** students have a legal right to an education, regardless of any differences, including immigration status. (*Plyler v. Doe* (1982) 457 U.S. 202.) As school administrators we must keep **ALL** schools and classrooms safe and inclusive educational havens for **ALL** students and their families. It is imperative that we maintain safe, inclusive, supportive, and positive learning environments. This includes providing not only for the academic, but also for the social and emotional needs of **ALL** students.

We must be ever vigilant in administering school policies that already provide protections. As monitors and responders to complaints, our students depend on us to address and prevent based discrimination and harassment based on race, color, national origin, religion, or any other protected status. We cannot permit our students to attend hostile educational environments.

To this end, below please find a brief synopsis of the laws and principles that protect students and guarantee their educational experience is free from discrimination, retaliation, and violence.

Preventing and Discouraging Discrimination and Retaliation

No Discrimination or Retaliation Based on Protected Classifications: California's public schools are subject to all federal and state laws and constitutional protections prohibiting discrimination on the basis of race, color, gender, sexual orientation, gender identity, transgender status, religion, national origin, ancestry, age, marital status, pregnancy status, veteran status, or disability. California's children have the right to attend public elementary and secondary schools

free from discrimination based on protected characteristics. (Education Code §§ 200, 220, 234 *et seq.*) As such, no student should be harassed or bullied because of his/her national origin, citizenship, religion and/or immigrant status. (*Ibid.*)

Not All Speech Is Protected, Including Discriminatory Speech: Student speech that retaliates, bullies or violates anti-discrimination laws and policies may not be protected as First Amendment “freedom of expression.” (Education Code § 48907.) Further, individuals, including students and employees, who engage in speech that violates non-discrimination laws and district policies can be disciplined. (Education Code § 48900.4; Government Code § 12940.)

Student Records

Student records and the information they contain (i.e., student’s religion, citizenship, immigrant status, national origin, etc.), are generally protected from disclosure to third parties except with written parental consent, in response to a health or safety emergency, or in response to a lawful subpoena. (Education Code §§ 49076, 49076.5, and 49077.) Subpoenas require advance notice to the parent and/or student (depending on the age of the student) to permit them to obtain a court order to protect against the disclosure. Law enforcement personnel, including immigration authorities, are third parties for purposes of accessing student records under California law. (Education Code §§ 49076, *et seq.*) School districts are currently prohibited from disclosing student records to immigration authorities, unless an exception applies. (Education Code § 49076.6.)

BE ADVISED: Regulations implementing the Family Educational Rights and Privacy Act (FERPA) permit (but do not require) disclosure of educational records to, among other federal officials, the Attorney General of the United States. (34 C.F.R. § 99.31(a)(3)(ii).) Such disclosure must be “in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs.” (34 C.F.R. § 99.35(a)(1).) Presumably, the U.S. Attorney General would not seek records relating to students’ immigration status as part of an education program “audit or evaluation.” Although we are unaware of the U.S. Attorney General seeking students’ educational records, one means of doing so could be through a broader interpretation of the FERPA regulations.

Immigration Enforcement At or Focused on Sensitive Locations

Families are increasingly concerned that current federal policy limits on immigration enforcement at sensitive locations, such as schools, may be expanded. At this time, such enforcement is guided by the *Memorandum on Enforcement Actions at or Focused on Sensitive Locations* (“*Sensitive Locations Memorandum*”) issued on October 24, 2011 by the U.S. Immigration and Customs Enforcement (“ICE”).¹ The ICE policy memorandum makes clear that enforcement actions, as a general matter, are not to take place at sensitive locations, including, but not limited to, elementary and secondary schools, in addition to postsecondary educational institutions, “unless (a) exigent circumstances exist, (b) other law enforcement

¹ *Memorandum on Enforcement Actions at or Focused on Sensitive Locations*, dated October 24, 2011, U.S. Customs and Enforcement, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

actions have led officers to a sensitive location as described in the ‘*Exceptions to the General Rule*’ section of this policy memorandum, or (c) prior approval is obtained.” The Sensitive Locations Memorandum specifies that the enforcement actions covered include: “(1) arrest; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance.”

ICE may carry out enforcement actions, however, under the *Sensitive Locations Memorandum* “when one of the following exigent circumstances exist: [] the enforcement action involves a national security or terrorism matter; [] there is an imminent risk of death, violence, or physical harm to any person or property; [] the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or [] there is an imminent risk of destruction of evidence material to an ongoing criminal case.”

It is important to highlight that the *Sensitive Locations Memorandum* is not governing law. It remains uncertain whether the Trump administration will continue to adhere to this guidance since it can be rescinded or amended at any time.

Safe Haven/ Sanctuary Resolutions

Some school districts have adopted so-called “Safe Haven” or “Sanctuary Schools” resolutions. Based on varying community perspectives some purport to provide for a refusal to actively assist with any immigration enforcement efforts at schools. Others simply declare and restate the protections that all students have for attending public schools regardless of their immigrant status. A most recent and related concern is the implication of the January 25, 2017 Executive Order seeking to deny federal funding to “sanctuary jurisdictions.” Thus, the legal implications and enforceability of adopting such resolutions should be addressed with legal counsel.

CALSA takes no position with respect to what should be included in such resolutions, other than to insist that they be crafted with a student focus. Such statements should reassure parents and students and inform them of their existing rights. Our districts may not be able to change or enforce immigration laws, but our purposes is to focus on the academic, social and emotional well-being of all students.

Pending Legislation

Earlier this month, State Senator President Pro Tempore Kevin de León introduced Senate Bill 54, the California Values Act, to prevent the use of state and local public resources to aid federal Immigration and Customs Enforcement agents in deportation actions. If adopted, SB 54 would create “safe zones” throughout the state by prohibiting immigration enforcement on public school premises. This bill has not become law and would likely be subject to various legal challenges, including the argument that federal law supersedes state law under the U.S. Constitution.

Closing

CALSA believes schools should remain safe and supportive havens for all children, regardless of their immigrant status, religion, or other protected characteristics. We support steps to ensure that every student develops the enduring knowledge, skills, and character to thrive in a changing

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world. We call upon you to continue to teach tolerance and inclusion in our schools, set clear and high expectations for how we treat one another, and encourage and equip all educators to address difficult issues surrounding race, discrimination, and other student challenges.

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