



# A MODEL CODE on Education and Dignity

## CHAPTER 4: FREEDOM FROM DISCRIMINATION

### 4.4 Immigrant and Undocumented Students

#### Human Rights Goal

Districts and schools shall ensure the rights and freedoms of all students, and prevent discrimination against and the isolation, surveillance, criminalization, detention or deportation of any students, including undocumented students, students with expired documents or their family members.

#### Recommended Language

- A. No law enforcement officials (including immigration officials, ICE agents or US Border Patrol) shall enter school property for the purposes of interrogating or detaining a student or their family member on immigration-related matters.**<sup>321</sup>
- B. Districts and schools shall not collect or share any information related to the immigration status of students or their families.**<sup>322</sup>
1. In accordance with federal law, schools cannot directly ask about citizenship or immigration status or deny entry to enrollment because of immigration status.<sup>323</sup>
    - a. Districts and schools cannot require social security numbers and birth certificates as the only options for documentation to prove residency and/or the age of a student.
    - b. Parents, guardians and students must be informed that: 1) they can prove residency and age via other forms of documentation, 2) sharing a social security number or birth certificate is voluntary, and 3) they cannot be barred from attending school if they do not have a social security number or birth certificate.
    - c. Schools and districts shall not delay,<sup>324</sup> block or revoke enrollment due to a lack of specific documents,<sup>325</sup> or place undue burdens on students and their families such as “re-registration”<sup>326</sup> or other procedural barriers to accessing their right to an education.
  2. If school staff is aware of a student or their family member’s immigration status, they must not share this information with anyone, including other school staff, law enforcement officials, or other government agencies (see Section 3.2 Guidelines for Suspensions, Expulsions and Removals, sub-sections on Due Process and the right to confidentiality in relation to FERPA, summarized below).
    - a. Districts should not designate any information as “directory information” under FERPA that could reveal the immigration status of students, including but not limited to place of birth and language(s) spoken.<sup>327</sup>
    - b. In the case of disciplinary action:
      - i. All information and documentation pertaining to a student’s suspension or expulsion records must be kept confidential in accordance with FERPA<sup>328</sup> and other state and federal student privacy laws and policies.
      - ii. Where FERPA does not apply and the school is legally allowed to share this information, the school should elect not to share suspension or expulsion records, either formally or informally with any law enforcement agency or personnel, including ICE.
- C. Districts and schools shall not participate in any local, state or federal initiatives or mandates (including Secure Communities) that require the reporting of undocumented students, exposing of documentation**

**status to law enforcement or media, or the barring of students from any protections, programs or opportunities available to other students.<sup>329</sup>**

**D. Schools shall post a written statement on the rights of immigrant students in a public place within each school building or provide handouts, articulating the following rights and policies:**

1. The right to a free public education as found in the Supreme Court case *Plyer v. Doe*. This right extends to all educational services, including special education and afterschool programs.
2. An ICE Sensitive Locations Memo<sup>330</sup> that outlines ICE's policy against conducting immigration related matters in sensitive locations such as schools.
3. The right to Fourth Amendment Protections against unreasonable searches and seizures.<sup>331</sup>
4. The right to freedom from discrimination either through intentional policies or actions, or those that are not intentionally or consciously discriminatory but nevertheless have a disparate, adverse impact on disadvantaged or stigmatized groups (as described in detail in Section 4.1 Right to Freedom from Discrimination).

**E. Districts and schools shall provide training to:<sup>332</sup>**

1. All school staff on the rights of immigrant and undocumented students and on creating welcoming and supportive school environments for those students; and
2. Counselors and advisers on working with immigrant and undocumented students to assist them in applying for school lunch, joining school clubs and organizations, applying to college, preparing for the SAT and ACT, and applying for scholarships and financial aid.

<sup>321</sup> ICE Sensitive Locations Memo available at: <https://www.ice.gov/ero/enforcement/sensitive-loc>; See also NYSED Memo available at: <http://www.nysed.gov/common/nysed/files/oag-sed-letter-ice-2-27-17.pdf>.

<sup>322</sup> Los Angeles Unified School District adopted a resolution entitled "Reaffirmation of Los Angeles Unified School District Schools as Safe Zones for Families Threatened by Immigration Enforcement." <https://dignityinschools.org/wp-content/uploads/2017/12/May-9-2017-Immigration-Resolution.pdf>.

<sup>323</sup> Department of Justice Fact Sheet. Available at: <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plyerfact.pdf>

<sup>324</sup> NCHE-Enrolling Children and Youth Experiencing Homelessness available at: <https://nche.ed.gov/downloads/briefs/enrollment.pdf>; see also 42 U.S.C. §11432(g)(3)(C).

<sup>325</sup> US Department of Education Dear Colleague Letter on School Enrollment Processes (2014) ; 42 U.S.C. §11432(g)(3)(C) .

<sup>326</sup> NYCLU Warns New Rochelle School District Against Plans to Re-register Students (2018). Available at: <https://www.nyclu.org/en/press-releases/nyclu-warns-new-rochelle-school-district-against-plan-re-register-students>; Jhone M. Ebert, Residency Guidance, July 19, 2018, available at <https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/89196290-7837-4056-99c9-3da650534e68?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1847738006&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22ResidencyGuidance%25207-19-18.pdf%22&response-content-type=application%2Fpdf&Signature=EdTSaR2hPIUUMWHz2%2B76mTBoTSo%3D>.

<sup>327</sup> "FERPA defines 'directory information' as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed....A school may disclose 'directory information' to third parties without consent if it has given public notice of the types of information which it has designated as 'directory information,' the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as 'directory information.'" Available at: <https://www2.ed.gov/policy/gen/guid/fpco/faq.html#q4>; 34 CFR § 99.37.

<sup>328</sup> US Dept. of Education-FERPA General Guidance for Students, available at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>

<sup>329</sup> Desis Rising Up and Moving (DRUM) and Advancement Project Immigrant Safe Zones? Immigrant Students' Access to Quality Education in New York City Public Schools (2013).

<sup>330</sup> John Morton, Memo re Enforcement Actions at or Focused on Sensitive Locations, October 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

<sup>331</sup> ACLU, Students Have a Right to Keep Cell Information Private. Available at: <https://www.aclu.org/blog/smart-justice/mass-incarceration/hello-students-have-right-keep-cell-information-private>.

<sup>332</sup> Supra Note 14.