

January 24, 2017

Kimberley Harrington, Acting Commissioner
New Jersey Department of Education
100 River View Plaza
P.O. Box 500
Trenton, New Jersey 08625-0500

Re: NJ Public Schools as Safe Havens for Students

Dear Commissioner Harrington:

Multiple news organizations and advocacy groups have reported an increase in harassment, intimidation, and bullying in New Jersey and schools throughout the country since the November election, based on characteristics such as immigration status, religion, ethnicity and sexual orientation.¹ As a result, we ask that you take immediate steps to reaffirm New Jersey's strong public policy against discrimination and to ensure safe and welcoming school environments, including by directing that our state's public schools operate as safe havens for all of our students and parents, as California's State Superintendent of Public Instruction recently did. See enclosed letter dated December 21, 2016 from Tom Tarlakson to California County and District Superintendents, Charter School Administrators, and Principals.

Like California, New Jersey has a very diverse population. Over 1/5, or just under two million, of our residents are foreign-born, and we have one of the most religiously and ethnically diverse populations in the country. We have also been estimated to have the fifth highest undocumented population in the United

¹ See, e.g., CBS News, "Post-Trump victory bullying, harassment reported in schools," November 13, 2016, available at <http://www.cbsnews.com/news/post-trump-victory-bullying-harassment-reported-schools/>; CNN, "Harassment in schools skyrockets after election, teachers report," November 30, 2016, available at <http://www.cnn.com/2016/11/29/health/school-survey-post-election-negative-incidents/>; and Southern Poverty Law Center, "The Trump Effect: The Impact of the 2016 Presidential Election on our Nation's Schools," November 28, 2016, available at <https://www.splcenter.org/20161128/trump-effect-impact-2016-presidential-election-our-nations-schools>.

States, and rank seventh in the number of unaccompanied immigrant children released to sponsors.

An educated state population depends on eliminating barriers to enrollment and ensuring safe and supportive conditions in our public schools. All school officials, parents, students, and communities must be informed and reminded of the laws that protect New Jersey's approximately 1.4 million public school students from questions about immigration status, and from discrimination, harassment, intimidation, and bullying in schools. These laws include:

- The 1984 decision by the United States Supreme Court in Plyler v. Doe, ruling that undocumented students may not be denied a free public education on the basis of their immigration status;
- New Jersey's Law Against Discrimination, N.J.S.A. 10:5-4, that protects public school students from discrimination based on race, creed, color, national origin, ancestry, age, disability, sex, sexual orientation or gender identity or expression.
- NJ Department of Education regulations at N.J.A.C. 6A:22-3.3 & 3.4 prohibiting public school officials from asking questions about, or conditioning school eligibility on, citizenship or immigration status;
- State and federal laws at 20 U.S.C. 1232g(b), 34 C.F.R. 99.31, and N.J.A.C. 6A:32-7.5, restricting the disclosure of personally identifiable student information to law enforcement, absent parental or guardian consent, a court order or lawful subpoena, or a health emergency; and
- New Jersey's Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 to 37, which prohibits the harassment, intimidation or bullying of public school students.

Therefore, we ask that you take immediate action to:

- 1) Direct, via letter to superintendents, charter school administrators, and principals, that all New Jersey public schools operate as safe havens for students and parents. This communication should reaffirm New Jersey's strong public policy against discrimination; convey that schools will remain welcoming places for children and parents regardless of immigration status; and declare that students and families, and their personally identifiable information, will be protected to the fullest extent possible under the law.

- 2) Provide example letters and Q&A sheets that districts can send to parents to reassure them of their schools' efforts to provide a safe and welcoming school environment and answer common questions.
- 3) Assist in providing professional development opportunities for school staff and administrators to learn about legal requirements for protecting student information and strategies to promote a safe and productive learning environment for all students.

We request that these steps be taken promptly to ensure that New Jersey's schools remain safe places for learning and teaching; they welcome all age-eligible students who reside in the State, regardless of background or status; our school officials are supported in their role of educating students; and our public education system stands firmly in favor of protecting the rights of its students and their parents.

We stand ready to work with you and the Department of Education in achieving these important goals.

Sincerely,



David G. Sciarra, Esq.
Executive Director
Education Law Center



Edward Barocas, Esq.
Legal Director
American Civil Liberties Union of New Jersey



Johanna Calle
Program Coordinator
New Jersey Alliance for Immigrant Justice

Via regular and electronic mail
Encls.

Cc: Senate President Stephen Sweeney
Assembly Speaker Vincent Prieto
Christopher Porrino, Attorney General
Donna Arons, Deputy Attorney General



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

December 21, 2016

Dear County and District Superintendents, Charter School Administrators, and Principals:

PUBLIC SCHOOLS REMAIN SAFE HAVENS FOR CALIFORNIA'S STUDENTS

In this time of uncertainty, anxiety, and fear I strongly encourage you to join me in declaring our public schools "safe havens" for students and their parents and to remind families about existing laws that protect them and their students' records from questions about immigration status.

Unfortunately, since the presidential election, reports of bullying, harassment, and intimidation of K-12 students based on immigration status, religious, or ethnic identification are on the rise.

As State Superintendent of Public Instruction, safety is my top priority. And my strongest commitment to you, your students and their families is that schools remain safe places to learn. California serves more than 6.2 million kindergarten through twelfth grade students with the most diverse population in the nation.

Parents should know they are welcome on our school campuses regardless of their immigration status. We encourage all parents and guardians to participate in their school communities and in the education of their children. Engaged parents play a key role in helping our students succeed. That is one reason encouraging parent engagement is a top priority for California schools and one of the key local indicators of success for our schools and districts.

The California Department of Education will continue to provide local educational agencies (LEAs) with guidelines about existing laws that protect student records, including:

- The 1984 Supreme Court decision *Plyler v. Doe* requires schools to enroll all eligible children regardless of their citizenship or immigration status.
- State and federal laws prohibit educational agencies from disclosing personally identifiable student information to law enforcement, without the consent of a parent or guardian, a court order or lawful subpoena, or in the case of a health emergency.

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- Districts must verify a student's age and residency, but have flexibility in what documents or supporting papers they use. They do not have to use documents pertaining to immigration status.
- To determine age, for example, an LEA can rely on a statement from a local registrar, baptismal records, or an affidavit from a parent guardian or custodian.
- To determine residency, an LEA can rely on property tax receipts, pay stubs, or correspondence from a government agency.

Since LEAs do have wide discretion in what records they use, I strongly recommend that they do not collect or maintain documents related to immigration status.

Some California districts, such as the Los Angeles Unified School District and Sacramento Unified School District, have declared themselves to be "safe havens" to let their communities know they will maintain a welcoming environment for all students and parents. I support this message.

Here is an example of a resolution from the Sacramento City Unified School District http://www.scusd.edu/sites/main/files/file-attachments/safe_haven_reso_final_amended_final.pdf.

Together, we can make it clear we will do our best to make sure the prospect of the deportation of undocumented students and their families will not interfere with helping our students succeed.

Our schools are not and will not become an arm of the U.S. Customs and Immigration Enforcement (ICE). Instead, they will remain safe places for learning and teaching for all students, regardless of immigration status.

Please join me in spreading this message. We can and must support each other as California leads the way forward.

Sincerely,



Tom Torlakson

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