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LEGAL UPDATE

April 19, 2018

To: Superintendents, Member School Districts (K-12)
From: Sarah Hirschfeld-Sussman, Schools Legal Counsel *[Signature]*
Carl D. Corbin, General Counsel *[Signature]*
Subject: **AB 699 - Required Policies Protecting Immigrant Students**
Memo No. 09-2018

On October 5, 2017, Governor Jerry Brown signed AB 699 into law, a bill designed to enhance protections for immigrant students served by school districts, county offices of education, and charter schools.¹ The bill went into effect on January 1, 2018, and contains a number of implications for public schools. In particular, the bill obligated the California Attorney General to publish model policies by April 1, 2018, and for schools to adopt those model policies, or their equivalent, by July 1, 2018.

On March 30, 2018, Attorney General Becerra published guidance and model policies pursuant to AB 699 to help schools and local educational agencies comply with the new law. To view the Attorney General’s guidance and model policies, along with a quick-reference guide and checklist, visit: <https://www.oag.ca.gov/bcj>. These model policies, or their equivalent, must be adopted by schools by July 1, 2018. Our office expects the California School Boards Association (“CSBA”) to develop and revise their model policies to incorporate these new requirements. We advise our clients who subscribe to CSBA’s model policies to check for “Policy Updates” over the next month for sample policies in the CSBA format. In the interim, included with this Legal Update is a listing of all of the model policy language from the Attorney General.

AB 699’s major provisions are described in further detail below.

¹ The bill is available online at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB699.



Discrimination:

The bill added language to the Education Code expressly prohibiting discrimination on the basis of immigration status. Immigration status cannot be used as a basis to deny students access or opportunity within public schools. The bill also clarifies that the Safe Place to Learn Act, a requirement for the CDE to monitor LEAs' compliance with adoption of a policy that prohibits discrimination, harassment, intimidation, and bullying based on specified characteristics, expressly includes immigration status among those characteristics covered by the law.

Collection of private information:

School officials and employees of a school district or LEA are prohibited from collecting or requesting information or documents regarding the citizenship or immigration status of pupils or their family members, including Social Security numbers, unless required by law or required to administer a state or federally supported educational program.

Reporting to governing board:

Superintendents of school districts and of county offices of education as well as charter school principals are required to timely report to their respective governing board or body of their LEA any requests for information or to access a school site by an officer or employee of a law enforcement agency for the purpose of enforcing the immigration laws. The superintendent or principal must timely report in a manner that ensures the confidentiality and privacy of any potentially identifying information.

Detained and deported parents:

When a student's parents are not available to care for the pupil, for example if they have been detained on immigration charges or deported, a school should not contact Child Protective Services (CPS) until it has exhausted all other avenues to ensure the student's care. Schools are required to pursue all contacts on the child's emergency card or follow any other instructions provided by a parent or guardian prior to contacting CPS. Schools are encouraged to work with parents/guardians to update emergency contact information for this purpose.

Provide "know your rights" information:

Schools must provide "know your rights" information to parents/guardians related to education rights for immigrant students and students with immigrant family members. Schools must advise parents of their children's rights to a free public education regardless of immigration status or religious beliefs. This information and notification may be provided in a school or school district's annual notice to parents, or by any other cost-effective means determined by the LEA. The California Attorney General's website includes "know your rights" resources at <https://oag.ca.gov/immigrant/rights>. One of the documents provided in the recent Attorney General publication is a "know your rights" handout for parents and guardians. We will provide our clients with a version of this handout in both English and Spanish as an attachment to our forthcoming 2018-2019 Annual Notice to Parents Legal Update.



Bullying and harassment education:

Schools must educate students about the negative impacts of bullying based on a student's actual or perceived immigration status or their religious beliefs or customs. The California Department of Education is now required to ensure school districts adopt policies prohibiting discrimination and establish procedures for reporting and addressing such incidents. Schools may need to modify anti-bullying curricula and provide additional professional development to staff.

“Safe Haven” policies:

The California Attorney General was required to create model policies regarding how to handle requests for access to school grounds and requests to obtain information about students and/or their family members for purposes related to immigration enforcement. In addition, the Attorney General was required to create model policies regarding notification procedures when a person gains access to school grounds for purposes related to immigration enforcement. You can find the Attorney General’s model “safe haven” policies in the attachment. Schools are required to implement equivalent policies by July 1, 2018.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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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 April 2018)

1. Model Policies for Collecting and Retaining Student Information

The [title of appropriate official or name of unit] shall maintain in writing [local educational agency] policies and procedures for gathering and handling sensitive student information and appropriate personnel shall receive training regarding those policies and procedures.

If the [local educational agency] possesses information that could indicate immigration status, citizenship status, or national origin information, the [local educational agency] shall not use the acquired information to discriminate against any students or families or bar children from enrolling in or attending school.

If parents or guardians choose not to provide information that could indicate their or their children's immigration status, citizenship status, or national origin information, the [local educational agency] shall not use such actions as a basis to discriminate against any students or families or bar children from enrolling or attending school.

The [local educational agency] shall not allow school resources or data to be used to create a registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.

2. Model Policies for Inquiries Regarding Immigration Status, Citizenship Status, and National Origin Information

[Local educational agency] personnel shall not inquire specifically about a student's citizenship or immigration status or the citizenship or immigration status of a student's parents or guardians; nor shall personnel seek or require, to the exclusion of other permissible documentation or information, documentation or information that may indicate a student's immigration status, such as a green card, voter registration, a passport, or citizenship papers.

Where any law contemplates submission of national origin related information to satisfy the requirements of a special program, [local educational agency] personnel shall solicit that documentation or information separately from the school enrollment process.

Where permitted by law, the [title of officer or unit] of the [local educational agency] shall enumerate alternative means to establish residency, age, or other eligibility criteria for enrollment or programs, and those alternative means shall include among them documentation or information that are available to persons regardless of immigration status, citizenship status, or national origin, and that do not reveal information related to citizenship or immigration status.

Where residency, age, and other eligibility criteria for purposes of enrollment or any program may be established by alternative documents or information permitted by law or this [resolution/policy], the [local educational agency's] procedures and forms shall describe to the applicant, and accommodate, all alternatives specified in law and all alternatives authorized under this [resolution/policy].

3. Model Policies for Inquiries About Social Security Numbers or Cards

The [local educational agency] shall not solicit or collect entire Social Security numbers or cards.

The [local educational agency] shall solicit and collect the last four digits of an adult household member's Social Security number only if required to establish eligibility for federal benefit programs.

When collecting the last four digits of an adult household member's Social Security number to establish eligibility for a federal benefit program, the [local educational agency] shall explain the limited purpose for which this information is collected, and clarify that a failure to provide this information will not bar the student from enrolling in or attending the school.

The [local educational agency] shall treat all students equitably in the receipt of all school services, including, but, not limited to, the gathering of student and family information for the free and reduced lunch program, transportation and educational instruction.

4. Model Policies and Procedures Regarding Information Sharing

The [local educational agency] shall avoid the disclosure of information that might indicate a student's or family's citizenship or immigration status if the disclosure is not authorized by Family Educational Rights and Privacy Act (FERPA).

[Local educational agency] personnel shall take the following action steps upon receiving an information request related to a student's or family's immigration or citizenship status:

- Notify a designated [local educational agency] official about the information request.
- Provide students and families with appropriate notice and a description of the immigration officer's request.
- Document any verbal or written request for information by immigration authorities.
- Unless prohibited, provide students and parents/guardians with any documents issued by the immigration-enforcement officer.

Except for investigations of child abuse, child neglect, or child dependency, or when the subpoena served on the local educational agency prohibits disclosure, the [local educational agency] shall provide parental or guardian notification of any court orders, warrants, or subpoenas before responding to such requests.

The [local educational agency] shall require written parental or guardian consent for release of student information, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information to immigration authorities for immigration-enforcement purposes; no student information shall be disclosed to immigration authorities for immigration-enforcement purposes without a court order or judicial subpoena.

The [local educational agency's] request for written or parental or guardian consent for release of student information must include the following information: (1) the signature and date of the parent, guardian, or eligible student providing consent; (2) a description of the records to be disclosed; (3) the reason for release of information; (4) the parties or class of parties receiving the information; and (5) if requested by the parents, guardians or eligible student, a copy of the

records to be released. The [local educational agency] shall permanently keep the consent notice with the record file.

The parent, guardian, or eligible student is not required to sign the consent form. If the parent, guardian or eligible student refuses to provide written consent for the release of student information that this not otherwise subject to release, the [local educational agency] shall not release the information.

5. Model Policies for Annual Information Notice to Parents and Guardians

General Information Policy

The [local educational agency] must provide an annual notice to parents and guardians of the school's general information policies that includes:

- Assurances that the [local educational agency] will not release information to third parties for immigration-enforcement purposes, except as required by law or court order.
- A description of the types of student records maintained by the [local educational agency].
- A list of the circumstances or conditions under which the [local educational agency] might release student information to outside people or entities.
- A statement that, unless the [local educational agency] is providing information for a legitimate educational purpose under FERPA and the California Education Code or directory information, the [local educational agency] shall notify parents or guardians and eligible students—and receive their written consent—before it releases a student's personally identifiable information.

Directory Information Policy

If the [local educational agency] decides to release directory information, the [local educational agency] shall provide an annual notice to parents and guardians, and "eligible students" in attendance, of the [local educational agency's] directory information policy that includes:

- The categories of information that the [local educational agency] has classified as public directory information that may be disclosed without parental consent and which should only include the information specifically identified in Education Code section 49061, subdivision (c).
- A statement that directory information does not include citizenship status, immigration status, place of birth, or any other information indicating national origin (except where the [local educational agency] receives consent as required under state law).
- The recipients of the directory information.
- A description of the parent's or guardian's abilities to refuse release of the student's directory information, and how to refuse release.
- The deadline in which the parent, guardian or student must notify the school in writing that he or she does not want the information designated as directory information.

6. Model Policies for Monitoring and Receiving Visitors onto Campus

No outsider—which would include immigration-enforcement officers—shall enter or remain on school grounds of the [local educational agency] during school hours without having registered with the principal or designee. If there are no exigent circumstances necessitating immediate action, and if the immigration officer does not possess a judicial warrant or court order

that provides a basis for the visit, the officer must provide the following information to the principal or designee: Name, address, occupation;

- Age, if less than 21;
- Purpose in entering school grounds;
- Proof of identity; and
- Any other information as required by law.

The [local educational agency] shall adopt measures for responding to outsiders that avoids classroom interruptions, and preserves the peaceful conduct of the school's activities, consistent with local circumstances and practices.

The [local educational agency] shall post signs at the entrance of its school grounds to notify outsiders of the hours and requirements for registration.

[Local educational agency] personnel shall report entry by immigration-enforcement officers to any on-site school police or other appropriate administrator as would be required for any unexpected or unscheduled outside visitor coming on campus.

7. Model Policies for Responding to On-Campus Immigration Enforcement

As early as possible, [local educational agency] personnel shall notify the [Superintendent or designated administrator] of any request by an immigration-enforcement officer for school or student access, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.).

In addition to notifying the [Superintendent or designated administrator], [local educational agency] personnel shall take the following action steps in response to an officer present on the school campus specifically for immigration-enforcement purposes:

1. Advise the officer that before proceeding with his or her request, and absent exigent circumstances, school personnel must first receive notification and direction from the [Superintendent or administrator].
2. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the phone number of the officer's supervisor.
3. Ask the officer for his/her reason for being on school grounds and document it.
4. Ask the officer to produce any documentation that authorizes school access.
5. Make a copy of all documents provided by the officer. Retain one copy of the documents for school records.
6. If the officer declares that exigent circumstances exist and demands immediate access to the campus, [local educational agency] personnel should comply with the officer's orders and immediately contact the [Superintendent or other administrator].
7. If the officer does not declare that exigent circumstances exist, respond according to the requirements of the officer's documentation. If the immigration-enforcement officer has:
 - ***an ICE (Immigrations and Customs Enforcement) administrative warrant***, [local educational agency] personnel shall inform the agent that he or she cannot consent to any request without first consulting with the [local educational agency's counsel or other designated agency official].
 - ***a federal judicial warrant (search-and-seizure warrant or arrest warrant)***, prompt compliance with such a warrant is usually legally required. If feasible, consult with the [local educational agency's legal counsel or designated administrator] before providing the agent access to the person or materials specified in the warrant.

- **a subpoena for production of documents or other evidence**, immediate compliance is not required. Therefore, [local educational agency] personnel shall inform the [local educational agency's] legal counsel or other designated official of the subpoena, and await further instructions on how to proceed.
8. While [local educational agency] personnel should not consent to access by an immigration-enforcement officer, except as described above, he/she should not attempt to physically impede the officer, even if the officer appears to be exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, [local educational agency] personnel shall document his or her actions while on campus.
9. After the encounter with the officer, [local educational agency] personnel shall promptly take written notes of all interactions with the officer. The notes shall include the following items:
- List or copy of the officer's credentials and contact information;
 - Identity of all school personnel who communicated with the officer;
 - Details of the officer's request;
 - Whether the officer presented a warrant or subpoena to accompany his/her request, what was requested in the warrant/subpoena, and whether the warrant/subpoena was signed by a judge;
 - [Local educational agency] personnel's response to the officer's request;
 - Any further action taken by the agent; and
 - Photo or copy of any documents presented by the agent.
10. [Local educational agency] personnel shall provide a copy of those notes, and associated documents collected from the officer, to the [local educational agency's legal counsel or other designated agency official].
11. In turn, the [local educational agency's legal counsel or other designated official] shall submit a timely report to the [local educational agency's] governing board regarding the officer's requests and actions and the [local educational agency's] response(s).
12. E-mail the **Bureau of Children's Justice** in the **California Department of Justice**, at **BCJ@doj.ca.gov**, regarding any attempt by a law-enforcement officer to access a school site or a student for immigration-enforcement purposes.

8. Model Policies for Parental Notification of Immigration-Enforcement Actions

[Local educational agency] personnel must receive consent from the student's parent or guardian before a student can be interviewed or searched by any officer seeking to enforce the civil immigration laws at the school, unless the officer presents a valid, effective warrant signed by a judge, or presents a valid, effective court order.

[Local educational agency] personnel shall immediately notify the student's parents or guardians if a law-enforcement officer requests or gains access to a student for immigration-enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

9. Model Policies for Responding to the Detention or Deportation of a Student's Family Member

The [local educational agency] shall encourage that families and students have and know their emergency phone numbers and know where to find important documentation, including birth certificates, passports, Social Security cards, doctors' contact information, medication lists,

lists of allergies, etc., which will allow them to be prepared in the event that a family member is detained or deported.

The [local educational agency] shall permit students and families to update students' emergency contact information as needed throughout the school year, and provide alternative contacts if no parent or guardian is available.

- The [local educational agency] shall ensure that families may include the information of an identified trusted adult guardian as a secondary emergency contact in case a student's parent or guardian is detained.
- The [local educational agency] shall communicate to families that information provided within the emergency cards will only be used in response to specified emergency situations, and not for any other purpose.

In the event a student's parent/guardian has been detained or deported by federal immigration authorities, the [local educational agency] shall use the student's emergency card contact information and release the student to the person(s) designated as emergency contacts. Alternatively, the [local educational agency] shall release the student into the custody of any individual who presents a Caregiver's Authorization Affidavit on behalf of the student. The [local educational agency] shall only contact Child Protective Services if the [local educational agency] personnel are unsuccessful in arranging for the timely care of the child through the emergency contact information that the school has, a Caregiver's Authorization Affidavit, or other information or instructions conveyed by the parent or guardian.

10. Model Policies for Responding to Hate Crimes and Bullying

Adopting and Publicizing Anti-Bullying and Anti-Harassment Policy

The [local educational agency] shall adopt and publicize policies that prohibit discrimination, harassment, intimidation, and bullying on the basis of a student's actual or perceived nationality, ethnicity, or immigration status. Those policies must be translated in the student's primary language if at least 15 percent of the students enrolled in the school speak a single primary language other than English.

The [local educational agency] shall notify parents and guardians of their children's right to a free public education, regardless of immigration status or religious beliefs.

- This information shall include information related to the "Know Your Rights" immigration enforcement established by the Attorney General (see Appendix G).
- The [local educational agency] shall inform students who are victims of hate crimes of their right to report such crimes.

Processing Complaints of Harassment and Bullying

The [local educational agency] shall adopt a process for receiving complaints of and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the following actual or perceived characteristics:

- disability
- gender
- gender identity
- gender expression
- nationality
- race or ethnicity
- religion

- sexual orientation
- association with a person or group with one or more of the aforementioned characteristics
- immigration status

The complaint process must include, but is not limited to, the following steps:

- A requirement that, if school personnel witness an act of discrimination, harassment, intimidation, or bullying, they shall take immediate steps to intervene when safe to do so;
- A timeline to investigate and resolve complaints of discrimination, harassment, intimidation, or bullying that shall be followed by all schools under the jurisdiction of the local educational agency; and
- An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint.
- The [local educational agency] shall ensure that complaint procedures contain confidentiality safeguards for immigration status information.
- The [local educational agency] shall prohibit retaliation against a person who submits a complaint of discrimination, harassment, intimidation, or bullying.

Training Students, Teachers, and Staff on Anti-Bullying and Anti-Harassment Policy

The [local educational agency] shall educate students about the negative impact of bullying other students based on their actual or perceived immigration status or their religious beliefs or customs.

The [local educational agency] shall also train teachers, staff, and personnel to ensure that they are aware of their legal duty to take reasonable steps to eliminate a hostile environment and respond to any incidents of harassment based on the actual or perceived characteristics noted above. Such training should, at minimum, provide agency personnel with the skills to do the following:

- Discuss the varying immigration experiences among members of the student body and school community;
- Discuss bullying-prevention strategies with students, and teach students to recognize the behavior and characteristics of bullying perpetrators and victims;
- Identify the signs of bullying or harassing behavior;
- Take immediate corrective action when bullying is observed; and
- Report incidents to the appropriate authorities, including law enforcement in instances of criminal behavior.