

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

MEMORANDUM

TO: Jennifer Niles, Deputy Mayor for Education
Hanseul Kang, State Superintendent of Education
Antwan Wilson, Chancellor, District of Columbia Public Schools
Scott Pearson, Executive Director, Public Charter School Board

FROM: Karl A. Racine, Attorney General for the District of Columbia *Karl A. Racine by ND*

DATE: May 11, 2017

RE: Guidance for Schools Regarding Immigration Concerns

The purpose of this guidance is to provide general information about the legal landscape around immigration to District schools and school personnel. It is intended as guidance to District of Columbia Public Schools (DCPS), the DC Charter School Local Educational Agencies (LEAs), as well as District schools staff, volunteers, and vendors, who may have questions about their rights and obligations around immigration enforcement, or questions about how they can support students and families who may be threatened by immigration enforcement.

DCPS has expressed its vision for inclusive school environments (<https://tinyurl.com/h6ng4dw>), and the DC Public Charter School Board (PCSB) issued its Sanctuary Schools for Undocumented Students Guide (<https://tinyurl.com/hhf8stt>) on January 31, 2017. This guidance is intended to supplement those documents and seeks to answer questions school and school personnel may have about steps they can take, consistent with the law, to protect students.

Unless otherwise noted, the guidance provided applies equally to DCPS and DC Charter School LEAs (collectively, DC Schools) and equally to DCPS Personnel and DC Charter School LEA Personnel (collectively, DC Schools Personnel). The information contained herein is not intended to be specific legal advice or protected by the attorney client privilege. It will be made available to the public.

Additional questions or concerns may be directed to Senior Counsel Stephanie Litos at Stephanie.Litos@dc.gov or on (202) 724-6650, or Assistant Deputy Attorney Chad Copeland at Chad.Copeland@dc.gov on (202) 724-6623.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

May 11, 2017

A MESSAGE FROM THE ATTORNEY GENERAL

In the District of Columbia, we value our diversity and the contributions of all residents. The District has made it a top priority to uphold and defend our values, especially those of diversity and inclusion. DC Schools serve students from at least 160 countries, and their well-being is essential to the entire District.

Recent federal immigration policy shifts have heightened community concerns and are having a negative impact on our students. Regardless of citizenship or immigration status, we are all afforded certain rights under the Constitution, as well as under District and federal laws—and all children have the right to free primary and secondary education.

Our office has received many questions about how local schools can best protect and support all students and their families, and about what responsibilities they may have with regard to immigration enforcement. We hope this guidance will provide some clarity for schools and help ensure that every student can take advantage of all the opportunities education offers him or her without fear.

OAG extends its sincere appreciation to the law firm Mayer Brown, and specifically its attorneys Alex Lakatos and Emily Horn, and to the Washington Lawyers Committee for Civil Rights and Urban Affairs, for providing invaluable assistance in drafting this guidance.

Sincerely,

A handwritten signature in black ink, appearing to be 'KARL A. RACINE', written in a cursive style.

Karl A. Racine
Attorney General, District of Columbia

ANSWERS TO FREQUENTLY ASKED QUESTIONS
FOR DC SCHOOLS AND DC SCHOOLS PERSONNEL

TABLE OF CONTENTS

I.	General Information.....	1
II.	Assisting Students and Families	3
III.	Protecting Student Information and Privacy	5
IV.	Law Enforcement and DC Schools.....	8
V.	Safe Haven Resolutions	14
VI.	Other Questions	16
	Appendix.....	17

I. GENERAL INFORMATION

Under the United States Constitution, all individuals, regardless of immigration status, have equal protection under the law. In a landmark ruling, *Plyer v. Doe*, 457 U.S. 202 (1982), the Supreme Court held that the Constitution affords all students the right to a free primary and secondary education, regardless of their immigration status.

Educational personnel are often a major source of support, resources and information for students, and are uniquely positioned to help address students' fears about immigration enforcement. While there are limits to the actions that schools can take to support students and their families, this guidance will go into detail about some of the important tools that are available.

It is most important that DC Schools and DC Schools Personnel are aware of the following, all of which will be explained in additional detail below:

- DC Schools are *not* required to ask about the immigration status of their students or their families.
- Under the Family Educational Rights and Privacy Act (FERPA), DC Schools do not allow access to student educational records without either (1) written authorization granted by the parent/guardian or adult student, or (2) a court order compelling access to the information. All students have an interest in maintaining the privacy of their educational records, regardless of the records' content. Unless required by a court order or authorized in writing by a parent, guardian, or adult student, it is illegal for schools to provide student information to immigration officials.
- Schools are not routinely open to public access, and limitations are imposed on who may enter and remain in a school. DC Schools may require warrants before permitting law enforcement, including ICE, to enter any school area, such as school buildings, classrooms, and fenced-in areas that may include schoolyards, playgrounds and parking lots. Generally, a warrant is not required for law enforcement to enter an area that is open to the public, such as a sporting stadium during an athletic event or an auditorium during a recital that the public is invited to attend.
- DCPS has a District-Wide Bullying Prevention Policy that can be applied to prevent and address bullying based on actual or perceived immigration status.
<http://dcps.dc.gov/publication/dcps-bullying-prevention-policy>
- DC Schools can develop resources to support students and families who may be threatened by immigration enforcement actions, such as creating rapid response teams tasked with aiding students whose parents or guardians are subject to arrest or deportation; providing education on the rights to which all persons, regardless of immigration status, are entitled; and providing referrals to organizations that will provide *pro bono* legal and other services to families and students in need.

- In most respects, the laws governing DC Charter School LEAs and DCPS are the same when it comes to supporting students and their families who are threatened by immigration enforcement. However, there are some relevant differences:
 - DC Charter School LEA Personnel are not covered by 8 U.S.C. § 1373 and therefore, LEAs may specifically preclude their personnel from sharing immigration data with ICE and from maintaining information on the immigration status, lawful or unlawful, of any individual. 8 U.S.C. § 1373 provides in part that “[a] State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” Section 1373 is discussed further in FAQs No. V(3).
 - DCPS has certain policies that may not be identical to those in DC Charter School LEAs. FAQs Nos. III(3), V(2) (FERPA), IV(7) (visitors).

When taking action to honor or enforce the policies, procedures, and the rights discussed in these FAQs, and when informing others of the policies, procedures, and the rights discussed in these FAQs, DC Schools Personnel **must not** put themselves, or those around them, in danger or at risk.

II. ASSISTING STUDENTS AND FAMILIES

This section addresses questions about how schools and educators can address fears about immigration enforcement inside and outside of the classroom, how they can assist students and their families who may be at risk, and steps they may take to prepare for immigration enforcement.

DCPS and each Charter School LEA are encouraged to adopt policies and procedures consistent with this guidance, and to communicate these policies and procedures clearly to students and their families, both in and out of the classroom. DC Schools are encouraged to post the policies and procedures prominently in multiple languages, including English and Spanish, at every school entrance.

1. Can DC Schools Personnel discuss immigration enforcement and student fears in the classroom?

Yes. DC Schools Personnel can teach students that everyone, regardless of their immigration status, is entitled to equal protection under the law, and, if they choose to do so, should discuss issues of immigration enforcement and student fears and concerns at an age-appropriate level in the classroom. DC Schools may wish to consider providing teachers with training on how best to address these issues.

2. Can school personnel distribute “know your rights” information to students and their families who may be threatened by immigration enforcement?

Yes, DC Schools can distribute “know your rights” materials to students and their families, but should obtain permission from the school administration before doing so. See the Appendix for sources of know-your-rights materials in multiple languages.

3. Can DC schools provide information to students and families in need of *pro bono* legal services related to immigration or family law?

Yes. See the Appendix for more information about organizations that assist immigrants in need of legal help.

4. Can DC Schools advise, require, or suggest that DC Schools Personnel who are aware of the undocumented status of a student or family assist the student to avoid detection?

No. It may be a crime to take affirmative and active steps to conceal, harbor, or shield from detection an undocumented person, with knowledge of or reckless disregard for that person’s undocumented status. *See* 8 U.S.C. § 1324. However, it is not harboring to make ordinary efforts to ensure a student’s educational success or to assist students with regard to social or other services. DC Schools Personnel are also not obligated to report an undocumented student or family member to ICE, or to assist ICE in apprehending that student. In fact, doing so may be prohibited under the law governing access to student

information (FERPA).

5. How can DC Schools Personnel prepare for immigration enforcement actions and their effect on students?

DC Schools Personnel can encourage parents to ensure that their list of authorized pickups (the persons other than parents/guardians who are permitted to pick up students from school) are up to date. If DC Schools Personnel are unable to reach a parent or guardian for any reason (including that the parents/guardians have been arrested or detained by ICE), then they should contact persons on these lists to find a suitable caregiver for children before referring children to social services.

DC Schools Personnel should have contact information of social services in case a student's parent(s) or guardian(s) is/are taken into custody, including by ICE, and no parent, guardian, or individual on the authorized pickup list is available to care for the student.

DC Schools may establish rapid response teams to assist students if their parent or guardian becomes subject to arrest or deportation. They may establish safe spaces for students to wait if a parent or guardian has been detained and may provide counseling or referrals for such students.

6. What happens to children whose parents are deported?

Children who become homeless through the deportation of their parents are entitled to continue their education at their home school through the completion of the academic year. Children are considered homeless if they are forced to share housing with other persons due to a loss of housing or because they are unaccompanied by an adult or guardian. Services for homeless children in school can be found at:
<https://osse.dc.gov/publication/homeless-education-program-fact-sheet>

III. PROTECTING STUDENT INFORMATION AND PRIVACY

This section addresses the protections that exist for student information, how schools should handle that information, and how schools should respond to requests from third parties, including law enforcement, to gain access to that information.

1. Are there any federal or DC laws that *require* DC Schools or DC Schools Personnel to inquire into the immigration status of students or their families?

No. Schools and school personnel are not required to ask about the immigration status of students or their families. Moreover, it is the policy of DCPS not to ask about a student's immigration status, and therefore DCPS personnel should not request this information. DC Charter School LEAs may want to consider adopting a similar policy, if they have not already done so.

2. Do records that DCPS maintains in the ordinary course of business include immigration status information? What should DC Schools Personnel do if asked about their knowledge of a student's immigration status?

No. DCPS records do not include immigration status information. If DCPS personnel are asked about their knowledge of a student's immigration status, they can respond that as a matter of policy, DCPS does not inquire into the immigration status of students or their families, nor do DCPS records include that information. Personnel at individual DC Charter School LEAs should determine whether his/her school has a similar policy and, if it does, can provide a similar response. Individual DC Charter School LEAs that do not have a policy regarding inquiries into a student's immigration status may consider adopting one.

3. What should personnel do if they are asked for student records that may contain information (e.g., languages spoken at home) that might be used to target students or their families for immigration enforcement?

DC Schools Personnel must comply with FERPA. FERPA is a federal law that protects the confidentiality of student educational records, regardless of the content of the records. Under FERPA, DC Schools and DC Schools Personnel cannot release any student education records without consent of the parent/guardian or adult student, or without a court order or lawfully issued subpoena.

If asked for any student education records, DC Schools Personnel **must** ensure that they have consent of a parent/guardian or adult student or are acting pursuant to a valid court order or subpoena. Therefore, if DC Schools Personnel receive a request for student educational records that lacks written consent from a parent/guardian or adult student, they should report the request to the principal, who should then seek advice directly from the DCPS-OGC, counsel for the DC Charter School LEA, or if the DC Charter School LEA does not have its own counsel, the Office of General Counsel for the Office of the State Superintendent of Education (OSSE).

Seeking advice from legal counsel is vital if DC Schools Personnel receive a legal document (such as court order or grand jury subpoena) seeking student records. DC Schools **should not** produce documents in response without consulting their counsel.

Counsel can review the relevant legal document, make appropriate objections, and ensure important rights and protections are not waived or forfeited. Counsel can also assist DC Schools Personnel to determine the scope of documents that must be produced and may be able to obtain legal limitations on how documents produced may be used and by whom.

The DCPS January 2017 School Visitor Policy (Chancellor's Directive 260.2) (https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS_School-Visitors-Directive.pdf) provides that DCPS schools must strictly comply with FERPA:

Release of Student Records

To comply with the Family Educational Rights and Privacy Act (FERPA), DCPS must not provide access to confidential student records, or discuss the content of such records, without written authorization granted by the parent/guardian or adult student, or via court order . . . The principal should call DCPS-OGC with any questions related to FERPA or education records access.

4. What rights do DC Schools have if they receive a request from law enforcement, including ICE, for student educational records?

DC Schools only are required to comply with requests that are compulsory under the law (such as a court order or subpoena). DC Schools Personnel should **always** consult with counsel for DCPS or the DC Charter School LEA (or, if the DC Charter School LEA does not have counsel, then counsel for the OSSE) **before** complying with any request for student records that is not authorized by a parent or guardian.

DC Schools may establish policies and procedures to assist the decisions of DC Schools Personnel regarding whether they must comply with requests for student educational records, and if so, what information must be produced.

Such policies and procedures may, for example, provide that all requests from law enforcement seeking production of student educational records be reported to appropriate personnel (such as the DCPS-OGC; counsel for each DC Charter School LEA or, if they do not have their own counsel, OSSE counsel; the Chancellor; a special law enforcement unit; or a cross-office working group) to determine an appropriate response and to provide guidance to DC Schools Personnel on how to respond.

5. What should DC Schools Personnel do if they receive a court order or subpoena for student records?

DC Schools Personnel should **immediately** consult the principal, who will contact appropriate legal counsel. DC Schools Personnel should not respond to any such judicial request without instructions from the DCPS-OGC, counsel for their DC Charter School LEA, or if the DC Charter School LEA does not have its own counsel, then counsel for OSSE.

IV. LAW ENFORCEMENT AND DC SCHOOLS

1. Who is responsible for keeping our schools safe? Are any of these groups involved in immigration enforcement?

The following groups work together to provide safety in DCPS:

1. DCPS Security Staff, who coordinate with DCPS Personnel and other security officers (<https://dcps.dc.gov/page/school-safe>; <https://tinyurl.com/jlhza7>);
2. Metropolitan Police Department (MPD) officers with special experience and training, known as School Resource Officers (SROs), who perform regular police duties in schools;
3. Security Officers, who work for the MPD through contract.

Certain DC Public Charter School LEAs may also have SROs and Security Officers assigned to them. Others may rely on their own personnel or may contract with third-party vendors for the provision of school security.

DC Schools Personnel, including DCPS Security Staff, are not authorized to assist ICE with the physical apprehension of undocumented immigrants. Further, DC Schools Personnel must comply with applicable DC Schools policies and procedures, including any applicable rules precluding them from inquiring into the immigration status of students and their families.

MPD Officers and Security Officers contracting with the MPD are subject to the following policy:

MPD officers are strictly prohibited from making inquiries into citizenship or residency status for the purpose of determining whether an individual has violated the civil immigration laws or for the purpose of enforcing those laws. In other words, the MPD is not in the business of inquiring about the residency status of the people we serve and is not in the business of enforcing civil immigration laws. <https://mpdc.dc.gov/release/mpd-policy-immigration-enforcement>.

2. Has the MPD entered into an agreement with the Secretary of Homeland Security under Section 287(g) of the Immigration and Naturalization Act, to enforce federal immigration law?

No.

3. When can federal law enforcement officials, including ICE, enter DC Schools property?

Federal law enforcement officials can enter school areas that are open to the public, but DC Schools may require them to obtain a judicial warrant in order to enter school areas

that are not open to the general public, such as school buildings, classrooms, or fenced-in areas that may include playgrounds, schoolyards, and parking lots.

DC Schools may choose to fence in areas on their property, and to display signs on those fences (e.g., FAQs No. IV(7) (setting forth text of sign)) to better protect these areas against warrantless entry. DC Schools may not require law enforcement officials to obtain a warrant before being present or taking action on public streets or sidewalks.

Currently, it is ICE policy to avoid conducting enforcement actions at “sensitive locations” in most circumstances. This policy was established by an October 24, 2011 memo from ICE director John Morton, which defines “sensitive locations” to include schools, and provides that ICE enforcement at or focused on a sensitive location must first be approved by certain senior ICE personnel unless there are exigent circumstances. (<https://www.ice.gov/doclib/erooutreach/pdf/10029.2-policy.pdf>) The Department of Education has also released a Fact Sheet on these issues (http://www.dcpsb.org/sites/default/files/report/1_safe-spaces-fact-sheet.pdf). Schools observing ICE actions on public streets or sidewalks that are focused upon a sensitive location may **request** that ICE **voluntarily** provide the schools with confirmation that ICE is acting in compliance with the October 24, 2011 memorandum and has the requisite approvals for its actions.

However, the future of ICE’s policy regarding “sensitive locations” is unclear.

4. Are federal law enforcement officers permitted to enter DC Schools without a warrant?

Typically, no. In order to enter areas of DC Schools that are not open to the public, which may include school buildings, classrooms, and fenced-in areas such as schoolyards, playgrounds and parking lots, law enforcement officers must have a warrant. Generally, a warrant is not required for law enforcement to enter an area that is open to the public, such as a sporting stadium during an athletic event or an auditorium during a recital that the public is invited to attend.

Nevertheless, in certain emergency situations, known as “exigent circumstances,” law enforcement may enter non-public areas without a warrant. “Exigent circumstances” occur when a law enforcement officer believes that he or she must act quickly to prevent imminent danger to life or serious damage to property, or to prevent the imminent escape of a suspect or destruction of evidence, and that there is no time to get a warrant. For example, exigent circumstances may exist when the police are in hot pursuit of a suspect who is possibly involved in criminal activities and in the process of fleeing. Exigent circumstances would not ordinarily apply to civil or criminal immigration violations.

5. How can DC Schools ensure that federal law enforcement, including ICE, is entering private areas of DC Schools property only with warrants or other court orders?

DC Schools should formalize policies and procedures that require the following:

- (a) Law enforcement's entry onto DC Schools property must be coordinated and facilitated only by designated DC Schools Personnel (e.g., the local principal).
- (b) All law enforcement personnel should provide DC Schools with reasonable advance notice when they wish to enter school campuses or property without a warrant.
- (c) Law enforcement requests to enter DC Schools property not supported by a valid warrant or other valid judicial order may be denied.
- (d) If law enforcement personnel seek to enter the school pursuant to a warrant or other judicial order authorizing their access to DC schools property:
 - (1) law enforcement should be referred to the designated DC Schools Personnel;
 - (2) that designated individual should request a copy of the warrant or judicial order;
 - (3) when presented with a warrant or other judicial order, the designated DC Schools Personnel should provide the warrant or judicial order for review to the appropriate DC Schools Personnel (such as the DCPS-OGC; counsel for each DC Charter School LEA or if they do not have their own counsel, then OSSE counsel; the Chancellor; a special law enforcement unit; or a cross-office working group);
 - (4) entry on DC Schools property must occur only after such designated personnel have had an opportunity to review and approve the warrant; and
 - (5) the policy should be explained to the law enforcement personnel seeking to enter the property.

6. What else can schools request from law enforcement officials, including ICE, before permitting them to enter DC Schools property?

In addition to a warrant or other valid court order, DC Schools should request that law enforcement voluntarily provide their credentials in connection with any request to enter DC Schools property. In the case of ICE, DC schools may request that ICE voluntarily provide written confirmation that its request to enter DC Schools property has been approved by senior ICE personnel in accordance with its October 24, 2011 memorandum on Enforcement Actions at or Focused on Sensitive Locations (<https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>). Schools may further request that parents or guardians be present when students are interviewed by ICE or other law enforcement officials.

7. What is current DCPS policy concerning entry by law enforcement onto DCPS property? Are there any ways existing policy could be strengthened?

The DCPS January 2017 School Visitor Policy (Chancellor's Directive 260.2) (https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS_School-Visitors-Directive.pdf) provides that all visitors to DCPS schools must receive

permission to be on school property. The Visitor Policy provides that DCPS school buildings must post the following sign at their entrances:

ALL VISITORS

Upon entering this building you must report immediately to the administrative office and receive permission to be on the premises. Only those individuals who have school related business will be granted permission to remain. Any unauthorized entrant is in violation of Section 22-3302(b) of the D.C. Code and will be criminally prosecuted.

The Visitor Policy further directs schools to cooperate with law enforcement:

Schools should make every effort to cooperate with law enforcement, including: local, state, and federal police officers/ investigators, investigators from the DC Office of the Inspector General (OIG), D.C. Child and Family Services Agency (CFSA), or the DCPS Investigation Team. However, school visits should be conducted in a manner that does not disrupt the school environment or class instruction unless absolutely necessary.

DCPS could strengthen its policy by adopting the suggestions discussed in FAQs No. IV(5) above.

We do not recommend that any change in policy be limited to ICE alone (although this would be legally permissible), but rather that any policy or procedures apply neutrally to all law enforcement requests to enter DCPS property.

8. How can DC Schools inform federal law enforcement about policies governing their entry onto school property?

DC Schools may communicate their policies to law enforcement in whatever manner they choose, which may include but is not limited to:

- (a) sending copies of applicable policies to law enforcement officials;
- (b) entering into memoranda of understanding (“MOU”) with law enforcement;
- (c) providing procedures for posting signs on DC Schools property to inform law enforcement of applicable policies and procedures; and
- (d) providing policy summaries/fact sheets to DC Schools Personnel, for them to pass on to law enforcement officials who seek to enter DC Schools property.

9. May DC Schools advise, require, or suggest that DC Schools Personnel refuse or resist directives from federal law enforcement, including ICE?

No. DC Schools must instruct DC Schools Personnel that, when taking action to honor or enforce the policies, procedures, and rights discussed in these FAQs or when

informing others of the policies, procedures, and rights discussed in these FAQs, DC Schools Personnel **must not** put themselves, or those around them, in danger or at risk. These FAQs describe the steps the DC Schools and DC Schools Personnel may request that law enforcement follow. If law enforcement refuses to cooperate, that becomes a matter for legal counsel (such as the DCPS-OGC, counsel for each DC Charter School LEA or counsel for the OSSE) and courts to determine.

10. What should DC Schools Personnel do if law enforcement officials, including ICE, attempt to enter DC Schools Property with or without a warrant?

If law enforcement officials, including ICE, seek to enter DC Schools Property with or without a warrant, DC Schools Personnel should inform them of applicable DCPS or DC Charter School LEA policy. This policy should include requiring law enforcement officials to provide a warrant sufficiently in advance of entry onto DC Schools Property to allow designated DC Schools Personnel to review the warrant.

DC Schools Personnel should also report the request to the principal, who will contact legal counsel, and/or in accordance with the policies and procedures of DCPS or their DC Charter School LEA.

11. What should DC Schools Personnel do if law enforcement officials do not honor DC Schools policy and enter or remain on DC Schools property without a warrant, or with a warrant that the designated DC Schools personnel has not yet reviewed?

When taking action to honor or enforce the policies, procedures, and rights discussed in these FAQs or when informing others of the policies, procedures, and rights discussed in these FAQs, DC Schools Personnel **must not** put themselves, or those around them, in danger or at risk.

DC Schools Personnel should advise law enforcement, including ICE, of applicable DC Schools policies and procedures and request that law enforcement honor such policies and procedures. If law enforcement refuses to cooperate, that becomes a matter for legal counsel (such as the DCPS-OGC, counsel for each DC Charter School LEA or counsel for the OSSE) and the courts to determine. Law enforcement's refusal to cooperate should be reported to the principal, who should contact legal counsel.

12. What should DC Schools Personnel do if they observe law enforcement, including ICE, acting in a manner they believe is unlawful or improper?

If DC Schools Personnel see law enforcement failing to honor DC Schools policy, their own policies on enforcement at sensitive locations, or the law, DC Schools Personnel **must not** put themselves, or those around them, in danger or at risk.

DC Schools may wish to designate particular personnel (such as the DCPS-OGC; counsel for each DC Charter School LEA or if they do not have their own counsel, then OSSE counsel; the Chancellor; a special law enforcement unit; or a cross-office working group)

to receive information from DC Schools Personnel who believe that they have seen law enforcement acting improperly.

DC Schools Personnel should report their observations to designated personnel or to their principal, who will contact legal counsel and/or make a determination about filing a formal complaint, and/or should report their observations in accordance with the DC Schools policies and procedures.

Information about lodging a complaint with the Department of Homeland Security (“DHS”) about a particular immigration enforcement action is available on the DHS website at <https://www.dhs.gov/> and the ICE website at <https://www.ice.gov/>.

V. SAFE HAVEN RESOLUTIONS

Across the nation, many school districts have announced resolutions declaring that they are “safe havens,” “sanctuary schools,” or “welcoming” to students and families threatened by immigration enforcement. There are many reasons that schools may choose to issue a safe haven resolution or public statement of support for students threatened by immigration enforcement. A safe haven resolution can help to provide comfort and communicate a school’s support for students and families, and can help students to feel safe in their school.

If schools choose, they may adopt Safe Haven Resolutions of their own. On January 25, 2017, Mayor Muriel Bowser declared that the District “is and will continue to remain a sanctuary city.” It is appropriate, and fully consistent with Mayor Bowser’s declaration, for DC Schools to issue their own safe haven resolutions or to promulgate policies and procedures clearly expressing that they are committed to being safe havens for students to the maximum extent permissible by law.

A safe haven resolution will not shield individuals from federal enforcement actions, but such a resolution may provide other important support for students and families threatened with immigration enforcement.

The legal and practical consequences of a safe haven resolution will depend on its precise terms. This section will discuss what requirements and prohibitions DC Schools may include as part of a safe haven resolution or policy.

Local examples of public statements by schools include:

- Superintendent Reaffirms Arlington Public Schools Commitment to Support All Children (<https://www.apsva.us/post/superintendent-reaffirms-aps-commitment-support-children/>)
- Prince George’s County Public Schools CEO Kevin M. Maxwell Letter ([http://www1.pgcps.org/uploadedFiles/Schools_and_Centers/High_Schools/Bladensburg/ICE%20Raids%20\(December%202016\).pdf](http://www1.pgcps.org/uploadedFiles/Schools_and_Centers/High_Schools/Bladensburg/ICE%20Raids%20(December%202016).pdf))
- Montgomery County Public Schools Welcome Statement (www.montgomeryschoolsmd.org/parents/immigration-information.aspx).
- Fairfax County Public Schools, Statement of School Board Member Pat Hynes (<https://content.govdelivery.com/accounts/VAEDUFCPS/bulletins/17f6f61>).

1. May a safe haven resolution prohibit DC Schools Personnel from inquiring into the immigration status of students or their families?

Yes.

2. Is it appropriate for a safe haven resolution to reaffirm that DC Schools will honor student privacy requirements (FERPA) to the fullest extent of the law?

Yes. DC Schools may further provide in the resolution that all subpoenas or other judicial orders seeking student educational records must be reviewed by designated DC Schools Personnel (such as the DCPS Office of General Counsel (“DCPS-OGC”));

counsel for each DC Charter School LEA or if they do not have their own counsel, then OSSE counsel; the Chancellor; a special law enforcement unit; and/or a cross-office working group) and that compliance and production of documents must occur in accordance with the instructions from such designated personnel.

3. Can a safe haven resolution specifically preclude DC Schools Personnel from sharing student or family immigration data with the federal government, including ICE?

DC Schools can preclude personnel from sharing student data to any third party for any purpose other than an educational purpose. DC Schools have a compelling interest in protecting the confidentiality of student educational records. Consistent with that interest, and consistent with FERPA, it is appropriate for DC Schools to preclude DC Schools Personnel from divulging *any* student data to *any* third party for a purpose other than an educational purpose.

In terms of prohibitions specific to ICE, DCPS and DC Charter schools are bound by different requirements.

Although general prohibitions against sharing student data based on confidentiality concerns are permissible, DCPS may **not** create a non-cooperation policy that targets ICE by precluding DCPS Personnel from providing information to ICE, while allowing DCPS Personnel to provide similar information to other third parties.

DC Charter School LEAs and DC Charter School LEA Personnel are not covered by 8 U.S.C. § 1373, which applies to prohibitions imposed by “a Federal, State, or local government entity or official” upon any “government entity or official.” *See* D.C. Code § 13-1702.5(b) (a public charter school “shall not be deemed, considered, or construed to be an entity of the District of Columbia government.”). Therefore, a DC Charter School LEA should be permitted to preclude DC Charter School LEA Personnel from sharing immigration data with ICE. *See Day v. Sebelius*, 227 F.R.D. 668, 678 (D. Kan. 2005) (holding that 8 U.S.C. § 1373 does not preclude directing private citizens to refrain from sharing immigration information with ICE). Such prohibitions may be unnecessary, however, if DC Charter School LEA Personnel are already (a) prohibited from making inquiries concerning student immigration status (see FAQs Nos. III(1), III(2)), and (b) complying with FERPA (see FAQs Nos. III(3), V(2)).

Student records are also protected by District of Columbia law. District of Columbia Regulations, found at 5E DCMR § 2603.1, require that:

Personally identifiable records and records that contain personal information shall not be released by the school system or any employee of the D.C. Public Schools to any individual, agency, or organization without the prior written, informed consent of the student or student’s parent or guardian.

There are narrow exceptions, but none apply to immigration officials. Any information reported to the federal government, unless otherwise required by court order or subpoena, must not include information that would permit the identification of the student or her or his parent or guardian. *See* 5E DCMR § 2603.5.

4. If DC Schools implement a safe haven resolution, how can it be publicized?

DC Schools can communicate their resolutions, policies, and procedures to the public in whatever manner they deem most appropriate, which may include but are not limited to: (a) providing written copies of the resolution, policies and/or procedures to students, including copies in languages spoken at home; (b) posting the policy on the Internet, including pages in languages spoken at home; and (c) encouraging educators to discuss the resolution, policies, or procedures with students in an age-appropriate manner.

VI. OTHER QUESTIONS

1. Should DC Schools volunteers follow the policies and procedure described in these FAQs?

Yes, DC Schools volunteers should follow the policies and procedures applicable to DC Schools Personnel relating to the issues discussed in these FAQs. Upon request, DC Schools volunteers should confirm in writing their commitment to comply with all resolutions, policies, and procedures applicable to DC Schools Personnel concerning the protection of students and their families threatened by immigration enforcement. A DC Schools volunteer should refrain from reviewing student education records unless the volunteer has received consent from the parent/guardian or adult student.

2. Are any of the answers in these FAQs different as to DC Schools volunteers?

To avoid doubt, DC Schools should obtain the written agreement of all volunteers that the volunteers will comply with all resolutions, policies, and procedures applicable to DC Schools Personnel concerning the protection of students and their families threatened by immigration enforcement. DC Schools volunteers should not be afforded access to any materials protected by FERPA, unless they have received consent of the parent/guardian or adult student to do so.

3. Are any of the answers in these FAQs different as to vendors or contractors providing goods or services to DC Schools?

To avoid doubt, DC Schools should obtain the written agreement of all vendors or contractors that the vendors or contractors will comply with all resolutions, policies, and procedures applicable to DC Schools Personnel concerning the protection of students and their families threatened by immigration enforcement.

Appendix

Sources of know-your-rights materials in multiple languages include:

- United We Dream (<http://unitedwedream.org/thank-deportation-defense-card-handly-phone/>)
- Illinois Coalition for Immigrant and Refugee Rights (http://www.icirr.org/content/documents/kyr_card_2017.pdf).
- American Federation of Teachers (http://www.aft.org/sites/default/files/fl_im_yourrightsfactsheet_020817.pdf).
- National Immigration Law Center. (<https://www.nilc.org/get-involved/community-education-resources/know-your-rights/>).]

The following organizations assist immigrants in need of legal help and other services in the District area.

AYUDA

<http://ayuda.com/wp/get-help/legal-services/immigration-law/>

6925B Willow Street NW, Washington DC 20012

(202) 387-4848

2755 Hartland Road, Ste 100, Falls Church VA 22043

(703) 444-7009

CAIR – Capital Area Immigrants Rights Coalition.

<https://www.caircoalition.org/>

1612 K Street, NW, Suite 204, Washington DC 20006

CARECEN (Central American Resource Center)

<http://www.carecencdc.org/>

1460 Columbia Rd. NW, Suite C-1 - Washington, D.C. 20009

(202) 328-9799 Walk-ins Mon 9:00-11:00AM, Tues 1:00-3:00PM

Catholic Charities of the Archdiocese of DC Immigration Legal Services

<http://www.catholiccharitiesdc.org/ILS>

924 G Street, NW, Washington DC 20010 - (202) 772-4352

Walk-ins Tuesdays 9:30-11:30am

1618 Monroe St., NW Washington DC 20010 - (202) 939-2420

Walk-ins Wednesdays, 9am

12247 Georgia Ave., Silver Spring, MD 20902 - (301) 942-1790

Walk-ins Thursdays, 8 am

Hogar Immigrant Services Catholic Charities of the Diocese of Arlington

<http://www.hogarimmigrantservices.org/>

6201 Leesburg Pike, Suite 307, Falls Church, VA 22044 - (703) 534-9805

Just Neighbors (Immigration Legal Services)

<http://www.justneighbors.org/>

5827 Columbia Pike Suite 320, Falls Church, VA 22041

1141 Eldon Street, Suite 200, Herndon, VA 20170 - (703) 979-1240

Call Tuesday—Friday 9am-5pm

KIND (Kids in Need of Defense)

<https://supportkind.org/>

(202) 824-8680 Unaccompanied minors ONLY, NO Walk-ins

Legal Aid Justice Center

<https://www.justice4all.org/>

6400 Arlington Blvd., Ste 600, Falls Church VA 22042 - (703) 778-3450

Northern Virginia Family Services

<https://www.nvfs.org/>

6400 Arlington Blvd, Ste 110, Falls Church, VA 22042 - (571) 748-2806

Call to schedule consult

The following organizations assist persons in need of legal help on family law issues in the Washington DC area.

Asian Pacific American Legal Resource Center

<http://www.apalrc.org/>

1627 K Street NW, Suite 610, Washington, D.C. 20006

Phone: (202) 706-7150 - Helpline: 202-393-3572

Bread for the City

<http://www.breadforthe.org/>

1525 Seventh Street, NW, Washington DC 20001 - 202-265-2400

1640 Good Hope Road, SE, Washington DC 20020 - 202-561-8587

Catholic Charities

<https://www.catholiccharitiesdc.org/legal-aid>

924 G St., NW, Washington DC 20001

Phone: (202) 350-4365; In Spanish: (202) 772-4325

Telephone Intake Hours: Monday, Tuesday, and Friday 9:30am - 12pm, 2pm-4:30pm; Wednesday and Thursday 9:30am - 12pm, 2pm - 7:30pm

Catholic University (Clinics and Columbus Community Legal Services)

<http://www.law.edu/CCLS/index.cfm#CCLS-home>

Phone: (202) 319-6788

DC Bar Advice and Referral Clinic

<https://www.dcbbar.org/for-the-public/help-for-individuals/advice.cfm>

Hours: 2nd Saturday of every month from 10am - 12pm

Locations: Bread for the City Northwest Center - 1525 7th Street NW; Bread for the City Southeast Center - 1640 Good Hope Road SE - 202-626-3499 ext. 3

Legal Aid Society

www.legalaiddc.org

1331 H St NW #350, Washington DC 20005 - (202) 628-1161