



October 18, 2017

Dear Superintendent:

President Trump's order terminating the successful DACA program, which protects immigrant children from deportation, creates a lot of fear and uncertainty in our communities and our state. In this letter, we offer suggestions to help you help your students in this difficult time, and to remain law-abiding in your policies and practices.

The American Civil Liberties Union of Minnesota is dedicated to protecting the rights that the Constitution guarantees to everyone. This includes noncitizens who may be attending your schools or trying to do so. The Deferred Action for Childhood Arrivals (DACA) program initiated by President Obama in 2012 was a program that deferred removal for nearly one million noncitizens who had arrived in the U.S. as children. This program removed much of the fear and stress that young children faced as they were growing up in Minnesota. But, as you know, President Trump recently ordered an end to DACA.¹ Because of the incendiary language used by political leaders² and others³ attacking noncitizens in the U.S., the ACLU of Minnesota is monitoring closely how government entities, including schools, are treating noncitizens, and is advocating zealously on their behalf.⁴

Apparently the President plans to let DACA simply expire, meaning that no individual now protected by DACA will be subject to removal until March 2018. DACA will continue to protect them until their period of protection – usually two years – expires. But they will not be permitted to renew their DACA applications after March 5, 2018, and will lose their protected status.

But the termination of DACA need not and should not affect how you treat your current and potential students. And there are ways for you to protect and respect all your students. Here's how:

1. Schools may not treat noncitizens differently from citizens.

Federal laws prohibit discrimination in public education, including discrimination on the basis of race, color, or national origin.⁵ Federal law

¹ <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html?mcubz=3>

² <http://www.cnn.com/videos/tv/2015/06/25/exp-presidential-candidate-donald-trump-immigration-intv-erin.cnn>

³ <http://money.cnn.com/2017/08/02/media/jim-acosta-stephen-miller-immigration/index.html>

⁴ <https://www.aclu-mn.org/en/issues/immigrant-rights>

⁵ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6 (public elementary and secondary education); Title VI, 42 U.S.C. § 2000d (recipients of federal funds).



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specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”⁶

All students in Minnesota have a right to a public education, regardless of their immigration status. *See Plyler v. Doe*, 457 U.S. 202 (1982). The Supreme Court warned in that case that taking away access to education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”⁷ In other words, interfering with a student’s access to education—such as prohibiting them from entering the school or requiring a social security number or proof of immigration status—violates our Constitution. Schools *may not* investigate the immigration status of students or their parents, and should not be collecting the social security numbers of students or their parents.

Also, the Family Educational Rights and Privacy Act (“FERPA”) requires schools to act with sensitivity in collecting and retaining information about children and to ensure that school records are not disclosed or used in a way that could harm students.⁸

2. School officials should not work with immigration officials.

Schools must ensure that school resource officers from local law enforcement agencies do not have general access to FERPA-protected records, and that the officers respect students’ Fourth Amendment rights to be free from unreasonable detention, interrogation, search, and seizure. These general principles are even more important for immigrant students because school policing practices can severely undermine their right to an education, as described in *Plyler*. Local police have no authority to enforce immigration law. Therefore, SROs ordinarily have no reason to communicate with Immigration and Customs Enforcement (ICE) or any other immigration authorities.

⁶ 28 C.F.R. § 42.104(B)(2); 34 C.F.R. § 100.3(b)(2); see also U.S. Dep’t of Educ., Office for Civil Rights & Office of the General Counsel, U.S. Dep’t of Just., Civil Rights Div., Dear Colleague Letter: School Enrollment Procedures 1 (May 8, 2014)

⁷ *Id.* At 223.

⁸ 20 U.S.C. § 1232g; 34 CFR Part 99. The U.S. Department of Education Privacy Technical Assistance Center provides a Data Security Checklist that schools can consult. Privacy Technical Assistance Center, Data Security Checklist (rev. 2015), <http://ptac.ed.gov/sites/default/files/Data%20Security%20Checklist.pdf>.



3. Do not over-criminalize student behavior.

SROs should not arrest students for incidents better handled as matters of school discipline. Police in schools commonly arrest students for misdemeanor offenses like disorderly conduct when such behavior could be and should be addressed through school discipline.⁹ Schools should carefully consider the extent to which school resource officers are involved in such actions. In fact, if SROs focus their attention unfairly on noncitizens or minority students, such targeting would likely violate the Fourteenth Amendment to the Constitution and subject the school district to legal actions.

4. Immigration agents should not be in your schools.

According to ICE policy, immigration agents should not engage in enforcement activities in sensitive locations like schools absent prior approval or in extreme situations.¹⁰ The Trump Administration recently reaffirmed this policy as it applies to schools.¹¹

But your staff may still see ICE enforcement actions in your district. If they do, they should direct ICE agents to you as the superintendent. You should verify the identity of the agents and demand to see their written legal authorization. If the ICE agents do not supply a judicially signed warrant—signed by a judge—you should not allow the agents into the school. Only a judicial warrant, not an administrative warrant, will allow ICE agents to enter locations in which there is a reasonable expectation of privacy.

To comply with the rules set out in *Plyler*, a school official may not affirmatively aid in removing a student from school based on the student's immigration status. If ICE agents detain a student, the school should

⁹ See, e.g., Chongmin Na & Denise Gottfredson, Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors, 30 JUST. Q. 619, 620 (2013); Steven C. Teske, A Study of Zero Tolerance Policies in Schools: A Multi-integrate System Approach to Improve Outcomes for Adolescents, J. OF CHILD AND ADOLESCENT PSYCH. NURSING; Matthew T. Theriot, School Resource Officers and the Criminalization of Student Behavior, 37 J. OF CRIM. JUST. (2009).

¹⁰ U.S. Immigration and Custom Enforcement, Sensitive Locations FAQs, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

¹¹ U.S. Department of Homeland Security, Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement (Feb. 21, 2017) (“Q28: The implementation guidance references rescinding all previous immigration enforcement memos. Does this include the ICE and CBP memorandum on sensitive locations? A28: No, the sensitive locations guidance remains in effect for both ICE and CBP.”), <https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>.



immediately notify the student's parent or guardian but should give no FERPA-protected information to ICE agents.

* * *

Enclosed is a model policy that has been adopted by schools in Minnesota and other states, which helps protect the rights of immigrant students. We urge you to adopt this policy. It addresses many of the issues in this letter and reinforces the protections that schools owe to all their students.

We also urge you and your school resource officers to adopt the second policy enclosed with this letter, which forbids inquiring into the immigration status of students or parents, reporting students and their parents to immigration officials, and detaining anyone for the purpose of immigration enforcement.

We are eager to help you protect and respect all your students. If you have questions or concerns, please let us know.

Very truly yours,

John B. Gordon
Executive Director

Encl.: Model Policy No. 1: Resolution Regarding District Practices Related To
Immigration and Customs Enforcement

Model Policy No. 2: Addressing Plyler Obligations and School-Based Law
Enforcement

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