



505 Fifth Ave., Ste. 901
Des Moines, IA 50309
www.aclu-ia.org

TO: ALL IOWA PUBLIC SCHOOL DISTRICT SUPERINTENDENTS
CC: Ryan Wise, Director, Iowa Department of Education
delivered by email

December 13, 2016

**Re: Advisory to Iowa Superintendents on the Rights to Equal Education,
Nondiscrimination, and Safety at School for Immigrant Students**

Dear Superintendent:

The ACLU of Iowa, the League of United Latin American Citizens (LULAC), and LULAC of Iowa are aware of a profound level of fear among many Iowa immigrant students and their families at this time, a troubling uptick in incidents of harassment and bullying of immigrant children at schools, as well as and misinformation about the rights of immigrants in schools. Teachers and administrators in the Des Moines area, for example, report confusion and fear from immigrant children and children of immigrants fearing deportation.¹ We, like many of you, are disturbed and heartbroken to learn of the extent of the challenges these students now face just to make it through a school day intact. Some school administrators have reached out to us for assistance and resources.

In an effort to assist schools in confronting these challenges and providing a safe and nondiscriminatory environment for all students, we are sending this advisory to all Iowa school district superintendents. Our goals in sending this advisory are to inform you, parents, students, and community members about the rights of immigrant children at school, to provide resources, and to ask that you take appropriate measures to protect the rights of your students.

Relevant school personnel should be reminded of three points:

- 1. The Supreme Court has held that it violates the Constitution to deny enrollment to undocumented immigrants.**

In *Plyler v. Doe*, 457 U.S. 292 (1982), the U.S. Supreme Court ruled that all children should have equal access to public education, regardless of citizenship or immigration status. Because the decision is based on the Fourteenth Amendment to the U.S. Constitution, it is not

¹ See, e.g., Daniel P. Finney, *Turns out the anti-Trump 'crybabies' really do have something to cry about*, DES MOINES REGISTER, Nov. 19, 2016, <http://www.desmoinesregister.com/story/news/local/columnists/daniel-finney/2016/11/19/des-moines-schools-anti-trump-crybabies-really-do-have-something-cry/94047220/>

subject to change by ordinary Act of Congress or state legislation. Additionally, the court ruled that public schools may not:

- Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- Engage in any practice that might “chill” a student’s right of access to school.
- Treat a student differently in order to determine his or her residency.
- Require students or parents to disclose or document their immigration status.
- Ask students or parents questions that would expose their undocumented status.
- Require Social Security numbers from all students, as this may expose undocumented status.

2. Schools are safe zones where federal officials avoid immigration enforcement actions.

We don’t know yet what policies the President-Elect or Congress will put in place regarding immigration enforcement, and it is premature to speculate. In the meantime, all current Department of Homeland Security (DHS) policies remain in effect. **One of those policies protects children and families from immigration enforcement actions at schools.** DHS policy on sensitive locations enforcement, available here: <https://www.cbp.gov/border-security/sensitive-locations-faqs>, instructs immigration and border agents to avoid undertaking enforcement actions at sensitive locations, recognizing the importance of being safe from fear of immigration enforcement actions at certain locations, like school. “Sensitive locations” include:

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Medical treatment and health care facilities, such as hospitals, doctors’ offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During public demonstration, such as a march, rally, or parade.
- Courthouses, unless limited to actions against individuals falling within the public safety priorities of the 2014 DHS enforcement priorities.

3. Schools are required by state and federal law to protect immigrant children from bullying and harassment.

Federal law requires that public schools protect students from discrimination or harassment based on race, color, religion, sex, national origin, or disability. *See, eg.*, Titles IV and VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation of 1973, Titles II and III of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act.

School officials may not simply turn a blind eye to bullying and harassment of immigrant students (or any students). Schools can be held liable for failure to protect students from bullying and harassment. *See, e.g. Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996); *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130, 1134-35 (9th Cir. 2003). School officials must take seriously the claims of harassment and fully and effectively resolve them. *See Flores* at 1135-36 (“Failure to take any further steps once he knew his remedial measures were inadequate supports a finding of deliberate indifference.”). School districts may violate these federal civil rights statutes and the Department’s implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees. 34 C.F.R. parts 100, 104, and 106. Some schools that have failed to protect students have had to pay hundreds of thousands of dollars in damages. Districts and employees are also prohibited from retaliating against or taking adverse action against students who have asserted or exercised their rights and must not retaliate against others who have supported these students’ rights.

State law provides seventeen areas specifically addressed as protected for students. Iowa Code § 280.28 (2015). They are: real or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status. *Id.*

Students whose rights have been violated may file complaints with the Iowa Department of Education, the U.S. Department of Education, the U.S. Department of Justice, the Iowa Civil Rights Commission, or in courts of law, but it is far preferable for schools to prevent bullying and harassment through education and training of school staff, teachers, and students, as well as addressing issues that do arise swiftly and in accordance with law.

Know-Your-Rights Resources

Finally, some school board members and administrators have reached out to our organizations looking for information and resources that may be helpful to provide to immigrant students and families at this time. Two such resources are:

- The ACLU of Iowa’s Student’s Rights Handbook: <http://www.aclu-ia.org/iowa/wp-content/uploads/2011/12/smlr-10-4-12-student-handbook.pdf>

- The ACLU of Iowa's wallet trifold, What to do if You're Stopped by Police, Immigration Agents, or the FBI in English: <http://www.aclu-ia.org/iowa/wp-content/uploads/2014/09/corrected-English-7-30-2014-ej.pdf>, and Spanish: <http://www.aclu-ia.org/iowa/wp-content/uploads/2013/04/Spanish-Bust-Duplex.pdf>.

Please contact our organizations if we may be of assistance in thinking through strategies to best support immigrant students and all students in accordance with legal requirements.

Sincerely,

/s/ Rita Bettis

Rita Bettis, *Legal Director & Interim Program Director*
ACLU Foundation of Iowa, Inc.
505 Fifth Ave. Ste. 901
Des Moines, IA 50309
P: 515-243-3988
F: 515-243-8506

Joe Enriquez Henry
National VP, Midwest Region
League of United Latin American Citizens
www.LULAC.org
P: 515-208-7312

Michael R. Reyes
State Director
League of United Latin American Citizens of Iowa