

# SAFE SCHOOLS FOR IMMIGRANT STUDENTS

## AB 699 (O'DONNELL) – IMPLEMENTATION FACT SHEET

(Confirms that all children have a right to attend our public schools regardless of immigration status.  
Amends Education Code §§200, 220, 234.1 & adds §234.7)

### SEVERAL BILLS WERE SIGNED INTO LAW THIS YEAR TO PROTECT CALIFORNIA'S IMMIGRANT COMMUNITIES. AB 699 ADDS ADDITIONAL PROTECTIONS FOR IMMIGRANT STUDENTS!

We need your help to make certain that school districts around the state change their local policies to follow the law and educate everyone about the changes.

#### What Does AB 699 Do & How Does It Help Students?

The United States Supreme Court held in *Plyler v. Doe* (457 U.S. 202), that under the United States Constitution all children have a right to attend our public schools regardless of their immigration status. The *Plyer* Court found that the harms imposed on society at large from denying these students an education far outweighed any resources that might be saved from excluding undocumented children from our public schools.

However anti-immigrant sentiment and increased ICE enforcement activity continues to threaten the right of immigrant children to attend school with many families currently living in fear and hesitant to send their children to school. A recent investigation by public interest law groups found that some 75 school districts were inquiring about a student's immigration status as part of their enrollment process. In response, AB 699 provides critical protections for immigrant students including: prohibiting the collection of information regarding immigration status; requiring the adoption of model policies to prevent immigration enforcement on school grounds; and prohibiting discrimination based on immigration status.

#### 1. AB 699 Prohibits Discrimination Based on a Student's Immigration Status:

Existing law prohibits discrimination on the basis of specific characteristics in educational activities conducted by school districts that



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receive state financial assistance. Some of these protected characteristics include disability, gender, religion, race and nationality. AB 699 expressly adds "immigration status" to the list of protected characteristics.

- School districts must adopt or amend their current policies to prohibit discrimination, harassment, intimidation, and bullying based on a student's actual or perceived immigration status.
- All districts must have a process in place to receive and investigate complaints for discrimination, harassment, intimidation, and bullying based on protected characteristics. These processes must be amended to include complaints for discrimination based on immigration status.

## 2. **AB 699 Prohibits the Collection of Immigration Information:**

School personnel are prohibited from collecting information or documents regarding the citizenship or immigration status of students or their family members, unless it is required by state or federal law. *We know of no state or federal law that requires such an inquiry.* The federal Departments of Justice and Education have stated that “Immigration or citizenship status is not relevant to establishing residency in the district, and inquiring about it . . . may have a chilling or a discouraging effect on student enrollment.”

## 3. **Inquiries by Law Enforcement to Enforce Immigration Laws Must be Reported:**

All Superintendents must report to their governing boards any requests for information or access to a school site by law enforcement for the purpose of enforcing immigration laws. These reports must be done in a timely manner.

## 4. **Schools Must Take Steps to Avoid Referrals to Child Protective Services:**

Should a parent become unavailable due to immigration enforcement activity, a school must exhaust any parental instructions relating to a child’s care. Schools should update parental emergency contact information and avoid referrals to Child Protective Services.

## 5. **School Board’s Must Inform Immigrant Parents About Their Children’s Rights:**

School boards must inform parents regarding the rights of their children to a free public education, regardless of their immigration status or religious beliefs. This information must also include the “know your rights” immigration enforcement policy that is to be drafted by the Attorney General. (See below.)

## 6. **School Boards Must Educate Students About the Impact of Bullying:**

School boards are required to educate students about the negative impact of bullying other

students based on actual or perceived immigration status or religious beliefs.

## 7. **The Attorney General Must Develop Model Policies Limiting Immigration Enforcement in Our Schools:**

By April, 1, 2018, California’s Attorney General must publish model policies on limiting assistance with immigration enforcement in schools. These policies should ensure that schools remain safe and accessible to all residents, regardless of immigration status. The Attorney General must consider the following issues when developing these policies:

- How to respond to a request for school site access for purposes related to immigration enforcement;
- How a superintendent is to be notified if someone requests or gains access to school grounds for immigration enforcement purposes;
- How to respond to a request for personal information about students or their family members for immigration enforcement purposes.

## 8. **School Districts Must Adopt Model Policies:**

All local educational agencies, which include all school districts, county offices of education and charter schools, must adopt the Attorney General’s model policies or equivalent policies by July 1, 2018.

AB 699 will help to protect immigrant students and ensure that they may continue to take advantage of the education to which they are entitled, free from intimidation or loss of access to programs that other students enjoy.

At the end of this fact sheet, you can find the exact text of AB 699.

## **How can you help make certain your school district follows the new law?**

California law is clear that school board policies must be consistent with the law. AB 699 takes

effect on January 1, 2018. You can help make certain your school district will be prepared to comply with this new law by doing the following:

- **Request** a copy of the district’s policies, rules, and procedures governing non-discrimination and harassment from your Superintendent and note that you are asking under the Public Records Act. Most Board Policies and Administrative Regulations are also available on a district’s school board webpage. The numbers for these non-discrimination policies and procedures are usually BP 5145.3, AR 5145.3 and BP 5145.3.
- **Check** if the policies, procedures, and complaint forms are consistent with AB 699. Is “immigration status” listed as one of the protected characteristics in the district’s non-discrimination policies, procedures, and complaint forms?
- **Advocate** for the school district to change the policies, procedures, and forms and to educate all school personnel, parents, and students regarding the new requirements.
- **Review** the district’s enrollment and registration forms and procedures. They are often found on a district’s website. Do they ask for information about a student’s immigration status? Do they require documents that undocumented families may not be able to produce, such as birth certificates or passports? If the registration process appears burdensome or hostile towards immigrant families, or asks for information about a student’s immigration status, ask that the process be changed and that any offensive questions or burdensome requirements be removed.
- **Meet** with the Superintendent and request that s/he update all enrollment, registration and non-discrimination policies and procedures so that they are in compliance with AB 699 and that they don’t discriminate against immigrant students or their family members. Include other parents, students and community members who care about immigrant student rights.
- **Spread the word:** Educate parents, students, and community members about the new law.
- **Ask** the school board to hold a hearing on the impact of AB 699 and the needs of immigrant students and their families within the district. You may want to ask the school board to discuss the following issues at a board meeting and to solicit input from the public:
  - Are the district’s enrollment and registration policies and procedures immigrant friendly and language accessible;
  - How does the board intend to inform immigrant parents about the educational rights of their children and the Attorney General’s new policies limiting immigration enforcement in our schools;
  - Are the notices of these rights language accessible;
  - How will the board educate students about the impact of bullying based on immigration status or religious beliefs;
  - Should there be additional services for immigrant students, such as access to counselors, etc.;
  - Can the district develop a list of immigrant-related resources available in the community and make it available on its website;
  - How will the district update emergency contact information for all families;
  - Is the district’s complaint process, including associated forms, understandable to immigrant parents and language accessible.

**AB 699 Co-Sponsors include:**

**CALIFORNIA  
TEACHERS  
ASSOCIATION**

**For questions about AB 699, please contact the following individuals:**

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**So, what EXACTLY does the law say?**

The specific changes to existing law are in red, in italics and underlined below:

**SECTION 1.**

*The Legislature finds and declares all of the following:*

- (a) The United States was founded on the principles of freedom and opportunity and is a refuge for the oppressed, the persecuted, and those looking for a better life. We honor the attainment of education for the betterment of the individual and the community.*
- (b) In June 1982, the United States Supreme Court issued Plyler v. Doe (457 U.S. 202), a landmark decision holding that states cannot constitutionally deny students a free public education based on immigration status. The Supreme Court found that any resources that might be saved from excluding undocumented children from public schools were far outweighed by the harms imposed on society at large from denying these students an education.*
- (c) For more than 30 years, Plyler v. Doe has ensured equal access to education for children regardless of immigration status, but anti-immigrant sentiment continues to threaten that right, including states and localities passing measures and adopting unofficial policies that violate the spirit of the United States Supreme Court's decision.*
- (d) Nowhere else in the nation has been more enriched by the contributions of immigrants than California, which is home to more foreign-born residents than anywhere else in the country. Immigrants play a vital role in all sectors of our state's economy and are valuable and essential members of the California community.*
- (e) Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.*
- (f) Children are entitled to a public education while in California, regardless of immigration status. With adequate protections in place, we will show that we are willing to take the steps necessary to ensure that our students have every opportunity to continue their education without fear or undue risk.*
- (g) A positive school climate is one in which students, educators, and staff feel safe, welcomed, supported, and connected. Studies show that healthy school climates contribute to academic achievement and other positive*

outcomes for students. In an effort to create a positive school climate, California schools must take steps to protect the integrity of their learning environments for all children.

(h) With great risks of changes to approaches to immigration policies and enforcement at the federal level, it is more important than ever for California to work to protect students and ensure that, regardless of their immigration status, they may continue to take advantage of the education to which they are entitled, free from intimidation or risk of a loss of access to resources and programs that other students enjoy.

(i) The amendment of Sections 200, 220, and 234.1 of the Education Code made by this act does not constitute a change in, but is declaratory of, existing law.

## **SEC. 2.**

Section 200 of the Education Code is amended to read:

### **200.**

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, ~~equal rights~~ including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

## **SEC. 3.**

Section 220 of the Education Code is amended to read:

### **220.**

No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal ~~Code~~ Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial ~~assistance~~ assistance, or enrolls pupils who receive state student financial aid.

## **SEC. 4.**

Section 234.1 of the Education Code is amended to read:

### **234.1.**

The department, pursuant to subdivision (b) of Section 64001, shall monitor adherence to the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and this chapter as part of its regular monitoring and review of local educational agencies, commonly known as the Categorical Program Monitoring process. The department shall assess whether local educational agencies have done all of the following:

(a) Adopted a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics set forth in Section 422.55 of the Penal ~~Code~~ Code, including immigration status, and Section 220 of this code, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The policy shall include a statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district.

(b) Adopted a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the actual or perceived characteristics set forth in Section 422.55 of the Penal ~~Code~~ Code, including immigration status, and Section 220 of this code, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The complaint process shall include, but not be limited to, all of the following:

- (1) 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.
- (2) 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 school district.
- (3) An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint filed pursuant to this section.
- (4) All forms developed pursuant to this process shall be translated pursuant to Section 48985.
- (c) Publicized antidiscrimination, anti-harassment, anti-intimidation, and antibullying policies adopted pursuant to subdivision (a), including information about the manner in which to file a complaint, to pupils, parents, employees, agents of the governing board, and the general public. The information shall be translated pursuant to Section 48985.
- (d) (1) Provided, incident to the publicizing described in subdivision (c), to certificated schoolsite employees who serve pupils in any of grades 7 to 12, inclusive, who are employed by the local educational agency, information on existing schoolsite and community resources related to the support of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) pupils, or related to the support of pupils who may face bias or bullying on the basis of religious affiliation, or perceived religious affiliation.
- (2) As used in this subdivision, both of the following apply:
- (A) Schoolsite resources may include, but are not limited to, peer support or affinity clubs and organizations, safe spaces for LGBTQ or other at-risk pupils, counseling services, staff who have received antibias or other training aimed at supporting these pupils or who serve as designated support to these pupils, health and other curriculum materials that are inclusive of, and relevant to, these pupils, online training developed pursuant to Section 32283.5, and other policies adopted pursuant to this article, including related complaint procedures.
- (B) Community resources may include, but are not limited to, community-based organizations that provide support to LGBTQ or other at-risk pupils and their families, and physical and mental health providers with experience or training in treating or supporting these pupils.
- (e) Posted the policy established pursuant to subdivision (a) in all schools and offices, including staff lounges and pupil government meeting rooms.
- (f) Maintained documentation of complaints and their resolution for a minimum of one review cycle.
- (g) Ensured that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, or bullying remains confidential, as appropriate.
- (h) Identified a responsible local educational agency officer for ensuring school district or county office of education compliance with the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and this chapter.
- (i) Nothing in this section shall be construed to require school employees to engage with religious institutions in the course of identifying community support resources pursuant to this section.

**SEC. 5.**

*Article 5.7 (commencing with Section 234.7) is added to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, to read:*

**Article 5.7. Pupil Protections Relating to Immigration and Citizenship Status**  
**234.7.**

*(a) Except as required by state or federal law or as required to administer a state or federally supported educational program, school officials and employees of a local educational agency shall not collect information or documents regarding citizenship or immigration status of pupils or their family members.*

*(b) The superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, shall report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or*

employee of a law enforcement agency for the purpose of enforcing the immigration laws in a manner that ensures the confidentiality and privacy of any potentially identifying information.

(c) If an employee of a school is aware that a pupil's parent or guardian is not available to care for the pupil, the school shall first exhaust any parental instruction relating to the pupil's care in the emergency contact information it has for the pupil to arrange for the pupil's care. A school is encouraged to work with parents or guardians to update the emergency contact information and not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through the use of emergency contact information or other information or instructions provided by the parent or guardian.

(d) The governing board or body of a local educational agency shall do both of the following:

(1) Provide information to parents and guardians, as appropriate, regarding their children's right to a free public education, regardless of immigration status or religious beliefs. This information shall include information relating to "know your rights" immigration enforcement established by the Attorney General and may be provided in the annual notification to parents and guardians pursuant to Section 48980 or any other cost-effective means determined by the local educational agency.

(2) Educate pupils about the negative impact of bullying other pupils based on their actual or perceived immigration status or their religious beliefs and customs.

(e) Nothing in this section prohibits the governing board or body of a local educational agency from establishing stronger standards and protections.

(f) (1) The Attorney General, by April 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement at public schools, to the fullest extent possible consistent with federal and state law, and ensuring that public schools remain safe and accessible to all California residents, regardless of immigration status. The Attorney General shall, at a minimum, consider all of the following issues when developing the model policies:

(A) Procedures related to requests for access to school grounds for purposes related to immigration enforcement.

(B) Procedures for local educational agency employees to notify the superintendent of the school district or his or her designee, the superintendent of the county office of education or his or her designee, or the principal of the charter school or his or her designee, as applicable, if an individual requests or gains access to school grounds for purposes related to immigration enforcement.

(C) Procedures for responding to requests for personal information about pupils or their family members for purposes of immigration enforcement.

(2) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the Department of Justice may implement, interpret, or make specific this section without taking any regulatory action.

(g) All local educational agencies shall adopt the model policies developed pursuant to subdivision (f), or equivalent policies, by July 1, 2018.

(h) For purposes of this section, "local educational agency" means a school district, county office of education, or charter school.

#### **SEC. 6.**

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.