

Resolution 25-022 Reaffirming Board of Education's Commitment to Making BUSD Campuses a Safe Zone for Students and Families Threatened by Immigration Enforcement and Committing to Alignment and Continual Collaboration with the City of Berkeley as a Reaffirmed City of Refuge and Sanctuary City and Accompanying Protocols

WHEREAS Berkeley Unified School District is the only public school district in the City of Berkeley, rich in its diversity, that proudly welcomes and educates all children, representative of many immigrant communities, persons of various national origins and ethnicities, including persons with various immigration status, both documented and undocumented, as well as international visitors from all of the world and their children and families; and

WHEREAS, the Berkeley Unified School District is committed to fostering an inclusive, equitable, and welcoming environment for all students, ensuring that every student has the opportunity to learn and thrive without fear or discrimination; and

WHEREAS, all of our students, both documented and undocumented, are integral members of our school community, contributing to the academic, cultural, and social fabric of our schools; and

WHEREAS the Fourteenth Amendment of the Constitution of the United States guarantees that no person shall be deprived of life, liberty or property without due process of law nor denied equal protection of the law thereby guaranteeing equal rights and protections to all individuals, including immigrants, regardless of their documentation status; and

WHEREAS the Fourth Amendment of the Constitution of the United States protects all individuals in the United States against arbitrary searches and seizures of people and their property without consent, reasonable suspicion, or probable cause; and

WHEREAS Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in any programs or activities receiving federal financial assistance; and

WHEREAS Family Educational Rights and Privacy Act (FERPA) of 1974 prohibits schools from sharing any and all student information including citizenship status, if known, with any person other than the student's parent or guardian without prior consent of the parent or guardian; and

WHEREAS in 1982, the U.S. Supreme Court ruled in *Plyer v. Doe*, that under the Fourteenth Amendment of the Constitution of the United States, public education institutions cannot deny free public education to undocumented students, recognizing that children have little control over their immigration status, and affirming the harm it would inflict on the child and society itself; and

WHEREAS formally Department of Homeland Security Guidelines for Enforcement Actions in or Near Protected Areas recognized that it is fundamental that immigration enforcement be done without denying or limiting children's access to their schools and declared schools (such as a pre-schools, primary or secondary school, vocational or trade schools, or colleges or universities) as well as places where children gather (such as a playgrounds, recreation centers, childcare centers, before- or after-school care centers, foster care facilities, group homes for children, or school bus stops) as protected areas where to the fullest extent possible immigration enforcement shall not take place; and

WHEREAS State of California Constitution Article I, Section 31 prohibits discrimination against any individual or group on the basis of race, sex, color, ethnicity, or national origin in public education; and

WHEREAS State of California Constitution Article I, Section 28, guarantees that all students and staff of public primary, elementary, junior high and senior high schools and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful; and

WHEREAS, California Education Code Section 200 and Section 220 explicitly prohibit discrimination in public schools on the basis of immigration status, ensuring that all students have the right to access educational programs, services, and activities in a safe and equitable environment; and

WHEREAS California Education Code 234.7 generally prohibits school officials and employees of school districts from collecting information or documents regarding citizenship or immigration status of students or their family members unless specifically required by state or federal law; and

WHEREAS California Education Code 49076.7 generally prohibits school districts from collecting or soliciting social security numbers or last four digits of social security numbers from students or their parents or guardian unless specifically required by state or federal law; and

WHEREAS the Berkeley Unified School District is also an employer and California Assembly Bill 450, the Immigrant Worker Protection Act, prohibits employers, or persons acting on behalf of the employer, from providing voluntary consent to the entry of an immigration enforcement agent to any nonpublic areas of a place of labor and also prohibits employers, or persons acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review, or obtain employee records; and

WHEREAS the Berkeley Unified Board of Education unanimously adopted Resolution Resolution 17-050 Reaffirming Our Commitment to the Education of All Children and Making all BUSD Campuses a Safe Zone for Students and Families Threatened by Immigration Enforcement on January 25, 2017; and

WHEREAS the Berkeley Unified Board of Education unanimously adopted Board Policy 5111.5 Protecting Undocumented Students on December 7, 2016 and further amended it on June 28, 2017; and

WHEREAS the Berkeley Unified Board of Education further recognizes that the act of undocumented presence in the United States is a civil violation of the immigration laws and is not, standing alone, a crime or violation of the federal or state criminal laws; and

WHEREAS the Berkeley Unified Board of Education recognizes that immigration enforcement activities in and around schools and school facilities would be a severe disruption to the learning environment and safe educational setting for all students; and

WHEREAS on January 21, 2025, the City of Berkeley adopted a resolution reaffirming Berkeley as a Sanctuary City, referring the City Attorney to explore the possibility of pledging the City's legal support to help "sensitive sites," including schools, to defend themselves against civil litigation, and creating a taskforce of Council Members and Community Based Organizations (CBOs) to continually assess threats to Berkeley's immigrant communities and seek to codify Berkeley's Sanctuary protections through a city ordinance; and

WHEREAS, per District Policy 5111.5, District personnel shall deny all immediate requests by immigration enforcement officers for school or student access, or any requests from immigration enforcement officers for review of school documents. Instead, District personnel shall immediately report to the Superintendent or designee any such request for review and consultation with legal counsel, to ensure the safety of all students, as well as compliance with *Plyler v. Doe* and other applicable state and federal laws; and

NOW THEREFORE BE IT RESOLVED that Berkeley Unified School District reaffirms that pursuant to federal and state law, every student has the right to attend school and to receive a free, safe, and equitable public education regardless of the student's or their family's immigration status; and

BE IT FURTHER RESOLVED that Berkeley Unified School District's primary consideration in all actions concerning children shall be the best interests of the child; and

BE IT FURTHER RESOLVED that Berkeley Unified Board of Education will continue to express its public support for the continuation and expansion of the Deferred Action for Childhood Arrivals (DACA) Program and all other pro-immigrant legislation that may be proposed at local, state or federal levels; and

BE IT FURTHER RESOLVED that Berkeley Unified School District is committed to actively assisting students to find scholarships that do not require social security numbers in order to support our objective to support our graduates in pursuing higher education ; and

BE IT FURTHER RESOLVED that in order to provide a public education, regardless of the student's or family's immigration status, absent any

applicable federal, state, local law or regulation, local ordinance, or court decision that may lawfully provide otherwise, the district shall act consistent with the following practices:

1. District personnel shall not treat students differently for residency determination purposes on the basis of their actual or perceived national origin, citizenship, or immigration status and shall treat all students equitably in the receipt of all school services for which they are eligible;
2. District personnel shall not inquire about a student's immigration status or require documentation of the legal status of a student or a student's parent or guardian, such as asking for a visa or passport, during enrollment or at any other time;
3. District personnel shall review the list of documents that are currently used to establish residency and shall ensure that any required documents would not unlawfully collect information or documents regarding citizenship or immigration status of students or their family members or guardians, or bar or discourage a student who is undocumented or whose parent or guardian is undocumented from enrolling in or attending school;
4. District personnel shall neither require students to apply for social security numbers nor require students to provide a social security number, passport or visa or any other proof of immigration status;
5. District personnel shall not allow any immigration enforcement officer or agent to enter a school site without first signing in with the school administration and to make a request to enter campus, in line with District policies on visitors, and receiving approval from the Superintendent;
6. District personnel shall immediately send all requests by immigration enforcement agents for information or documents to the Superintendent, who in consultation with district legal counsel, shall consider all legally permissible actions that may be taken to respond to

such requests to protect the privacy rights of students and their families;

7. All District personnel, when encountering immigration enforcement agents who are on school grounds on account of urgent or “exigent” circumstances, shall direct them to the school office and alert an administrator to contact the Superintendent’s office and legal counsel. District personnel are also encouraged to direct the immigration enforcement agents to the District office to avoid any disruption to the learning environment and safe educational setting for all students ;

9. District personnel shall not enter into any agreement with ICE or any other immigration enforcement agents to enforce federal immigration law, and shall not participate in any ICE or Border Patrol enforcement actions;

10. District personnel, as designated by the Superintendent, along with district legal counsel, shall review the impact of any changes in federal immigration laws, state laws, and policies or programs that may impact students, and develop solutions aimed at preventing and/or mitigating the impact on both students and employees that may arise from the collection of, storage of, or access to any personally identifiable information for immigration enforcement purposes.

11. District personnel shall take all reasonable measures so that before- and after-school program providers and other service providers that have access to student or family information will also follow the actions described herein; and

BE IT FURTHER RESOLVED that in line with the City of Berkeley, except in limited circumstances where immigration enforcement agents have a valid judicial warrant, and only after review and consultations with district counsel and approval of the the Superintendent, BUSD employees, contractors or volunteers are not required to:

- Cooperate with immigration enforcement agents agents or provide consent to agents to enter school premises;

- Answer immigration enforcement agents' questions or provide any protected data unless otherwise directed by the Superintendent;
- Immediately comply with an immigration enforcement agents' administrative warrant or subpoena;
- Immediately comply with a subpoena or warrant served by immigration enforcement agents unless otherwise directed by the Superintendent.

In any of these circumstances the BUSD employee, contractor, or volunteer will instead immediately seek guidance from the Superintendent and district counsel; and

BE IT FURTHER RESOLVED that in line with the City of Berkeley no district or school employees, contractors or volunteers shall consent to warrantless searches by immigration enforcement agents of a non-public district area, such as schools, or non-public school records; and

BE IT FURTHER RESOLVED that in line with City of Berkeley if any BUSD student or staff members has questions regarding their immigration status or immigration resources, District staff shall not refer them to Immigrations and Customs Enforcement or any other government agency; and

BE IT FURTHER RESOLVED that in line with the City of Berkeley no district department, committee, employee, contractor or volunteer shall use any district funds or resources to assist in the enforcement of the federal immigration law or to gather or disseminate information on the status of the individual students or employees of the district unless otherwise directed by the Superintendent; and

BE IT FURTHER RESOLVED that the superintendent shall ensure that all teachers, school administrators and school and District office staff will be adequately and annually trained on how to implement this Resolution; Resolution 17-050, and Board Policy 5111.5 Protecting Undocumented Students through direct training and written, easily accessible instructions; and

BE IT FURTHER RESOLVED that the District will ensure that Office of Family Engagement and Equity, all student support counselors, and the crisis support team are prepared and available to support students and families seeking information, help, or resources, including mental health support, regarding students' and families' immigration status; and

BE IT FURTHER RESOLVED that Berkeley Unified School District is committed to working with City of Berkeley and community organizations to ensure that all Berkeley Unified families are aware of their civil rights and available community resources, and that families are supported to prepare caregiver affidavits and family emergency plans as necessary; and

BE IT FURTHER RESOLVED that Berkeley Unified School District encourages class lessons and schoolwide assemblies on immigration and migration, including the role of documented and undocumented individuals, that uplifts the contribution of immigration to society in the United States and eliminates bias, discrimination, and dehumanization of migrants, immigrants, refugees, and asylum seekers; and

BE IT FURTHER RESOLVED that the Berkeley Unified School District along with City of Berkeley calls on the California legislature to pass SB 48 to Keep Immigration and Customs Enforcement Off of School Campuses, Protecting School Attendance and Funding Amid Deportation Threats.

BE IT FURTHER RESOLVED that Berkeley Unified School District will mark International Migrant Day on December 18th and World Refugee Day on June 20th annually, develop resources for educators and families that teach about, uphold, affirm, and celebrate the contributions of our diverse immigrant populations; and

IT IS FINALLY RESOLVED that BUSD rejects any legislation or action inside and outside of our classrooms that dehumanizes, marginalizes, or violates the rights of our immigrant students and their families in our community and beyond.

APPROVED AND ADOPTED by the Governing Board of the Berkeley Unified School District this February 5, 2025 by the following vote:

AYES: 4
NOES: 0
ABSENT: 1
ABSTAIN: 0