



Edgar Saldivar  
Senior Staff Attorney  
713.942.8146 ext. 111  
esaldivar@aclutx.org

Kali Cohn  
Staff Attorney  
214.346.6575 ext. 100  
kcohn@aclutx.org

Dear Superintendent:

As one of the most diverse states in the country, Texas has become home to many immigrant families from across the world. These families, and in particular, their school-age children are part of the fabric of our communities. Given the rapidly changing demographics in our state, it is critical that schools remain safe and positive environments for all students, regardless of their immigration status. We write to provide information about the rights of students in schools, the applicability of Texas's most recent immigration-related law (known as SB4), and best practices to ensure that all students in your district are protected.

### **The right to equal access to public education**

The Supreme Court made clear in *Plyler v. Doe*, 457 U.S. 202 (1982), that undocumented students have the same access to free public education as students who are legally present in the U.S. To protect that right, it is critical that school districts maintain a school environment where students are safe and do not risk interaction with immigration authorities.

As the Texas Association of School Boards has emphasized, a significant component of maintaining such an environment rests on communication. School officials should emphasize to students and their families that the school is a safe place for all students, regardless of immigration status. Officials should assure community members that they do not maintain information related to immigration status and they play no role in immigration enforcement.<sup>1</sup>

Additionally, Immigrant and Customs Enforcement ("ICE") currently designates schools as sensitive locations, meaning that ICE will not conduct enforcement actions, such as apprehensions, arrests, interviews, or searches at schools except in very limited circumstances.<sup>2</sup>

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<sup>1</sup> TEXAS ASSOCIATION OF SCHOOL BOARDS, STUDENT IMMIGRATION ISSUES IN TEXAS PUBLIC SCHOOLS 9 (2017), [https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/student\\_immigration\\_issues.aspx](https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/student_immigration_issues.aspx) ("School attendance is often negatively affected by concerns about immigration enforcement. School officials may need to emphasize to the community that school is a safe place for students. To share this message, school districts may communicate through parent meetings, newsletters and websites, and other means to students and parents that schools do not keep or share records about immigration status and do not play a role in immigration enforcement.").

<sup>2</sup> *FAQ on Sensitive Locations and Courthouse Arrests*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/ero/enforcement/sensitive-loc>; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT ACTIONS AT OR FOCUSED ON SENSITIVE LOCATIONS (2011), [https://www.ice.gov/doclib/ero-AMERICAN\\_CIVIL\\_LIBERTIES\\_UNION\\_FOUNDATION\\_OF\\_Texas](https://www.ice.gov/doclib/ero-AMERICAN_CIVIL_LIBERTIES_UNION_FOUNDATION_OF_Texas)

School officials should review their policies to ensure that they appropriately limit collaboration with immigration officials on their campuses.

Finally, school officials should examine their policies and practices regarding policing on campus to ensure that they do not inadvertently lead to students being placed in deportation proceedings. Arrests and other formal law enforcement contact can result in information sharing with immigration authorities, which can ultimately result in deportation.<sup>3</sup> Similarly, police policies may permit school resource officers (SROs) to provide assistance to and share information learned about a student with immigration officials upon request. School officials and school resource officers (SROs) should agree on the mutual goal that schools should be safe and positive environments that keep students in school and should ensure all relevant policies uphold that goal.

We have attached policy recommendations to assist your district and your SROs in protecting students and parents' constitutional rights and avoiding liability for infringing on those rights.

### **What is SB4 and what does it do?**

SB4 does nothing to change the access of immigrant students to an education and safe school environment. What SB4 does is bar local law enforcement from prohibiting cooperation with federal immigration authorities. SB4 also makes Texas the first state to require that local law enforcement agencies comply with and honor all federal immigration detainer requests. Localities and officials that fail to comply with the law are subject to severe civil and criminal penalties. However, the requirements set forth by SB4 do not apply to K-12 schools.

### **Does SB4 apply to public or charter schools?**

No, public grade schools and open enrollment charter schools are expressly exempt from the requirements of SB4.<sup>4</sup>

Because of this exception, regardless of SB4's status in the courts, police officers employed or contracted by schools can be prohibited from investigating immigration status either by directly questioning students or by examining educational records.<sup>5</sup> We encourage you to put in place such limitations to uphold all students' ability to access a public education regardless of immigration status.

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[outreach/pdf/10029.2-policy.pdf](#) (listing schools as sensitive locations and sharply limiting immigration enforcement activity there);

<sup>3</sup> *E.g.*, IMMIGRANT LEGAL RESOURCE CENTER, THE SCHOOL TO PRISON DEPORTATION PIPELINE (2018).

<sup>4</sup> TEX. GOV'T CODE § 752.052(d); *see also* TEXAS ASSOCIATION OF SCHOOL BOARDS, STUDENT IMMIGRATION ISSUES IN TEXAS PUBLIC SCHOOLS 11 (2017), [https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/student\\_immigration\\_issues.aspx](https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/student_immigration_issues.aspx) ("This new subchapter does not apply to a school district or open-enrollment charter school. The subchapter also does not apply to a peace officer employed or contracted by a district or charter school during the officer's employment with the district or charter school while the officer is performing the contract. In addition, the subchapter specifies that it does not apply to the release of information contained in educational records of an educational agency or institution, except in conformity with the federal Family Education Rights and Privacy Act (FERPA).").

<sup>5</sup> 8 U.S.C. § 1373 prohibits state agencies from enacting policies that limit *sharing* information about immigration status but it does not prohibit policies prohibiting asking or investigating immigration status.

Parents and students may be at risk of SB4's effects anywhere outside of school, including on their way to and from school. Accordingly, it is important that schools understand what rights these students have and how best to protect them from the effects of SB4.

### **Students and parents' rights under SB4**

Students and their families have the following rights, even under SB4:

- Students and their families do not have to answer any questions from school and local police officers about their immigration status and have the right to remain silent. To invoke this right, they should say "I am exercising my right to remain silent."
- Individuals can decide to stop answering a police officer's questions even if they previously answered some questions.
- While it is perfectly acceptable to remain silent, individuals should **never** make any false claims about immigration status or any other false representations.
- Students should speak with an immigration lawyer before answering any questions about their immigration status.

For more information on individuals' rights under SB4, visit <https://www.aclutx.org/en/SB4>.

### **Administrators, teachers, and staff members' rights under SB4**

As you know well, teachers are a primary source of advice and counseling for students and parents. This is especially true for immigrant students, who often need additional guidance to integrate into the school system. Teachers in your school district may be wondering if they face any limits to helping inform students and parents of their rights with respect to immigration enforcement and, in particular, SB4. Teachers who take steps to inform students of their rights are speaking as citizens on a matter of public concern, and their speech is protected under the First Amendment.<sup>6</sup>

Attached to this letter is a "Know Your Rights" pamphlet summarizing the First Amendment rights of teachers and students in public elementary and secondary schools. The ACLU of Texas can provide further information and training through information sessions and workshops at your schools. These sessions help teachers, administrators, students, and parents ensure the safety and security of students and their families. We encourage you to schedule a session with us for your district so we can provide further guidance on immigration enforcement in schools to your students and their families. To schedule a session, please submit a request at <https://action.aclu.org/secure/aclu-texas-freedom-speakers-request>.

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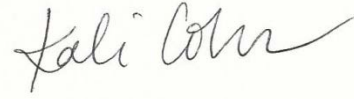
<sup>6</sup> The government cannot punish a teacher simply because it disagrees or dislikes what he expresses, and public schools cannot take adverse action against their employee unless the school's **legitimate** need for limiting speech outweighs the employee's interest in engaging in the protected speech. Because informing students of their rights does not impede a teacher's ability to perform his job duties, the government has no legitimate need to restrict that speech. As long as a teacher's speech regarding SB4 is not in furtherance of his job duties, it is protected under the First Amendment.

We trust that you and your administration will continue to protect and safeguard your students' rights and we appreciate your ongoing commitment to your students' educational achievement and academic growth.

Regards,

A handwritten signature in black ink, appearing to read 'ES', with a large, stylized flourish at the end.

Edgar Saldivar

A handwritten signature in black ink, appearing to read 'Kali Cohn', written in a cursive style.

Kali Cohn