



June 8, 2018

ASSEMBLY BILL 699 REQUIRES BOARDS TO ADOPT NEW POLICIES ON IMMIGRATION ENFORCEMENT BY JULY 1, 2018

Assembly Bill 699 (O'Donnell) ushered in a series of measures intended to provide enhanced protections for undocumented immigrant students. Among other things, the legislation requires the Attorney General to publish guidance and model policies on immigration enforcement-related issues. Districts are required to adopt these policies, or their equivalents, by July 1, 2018.¹ The following is an overview of the requirements of the new law.²

The California School Boards Association recently published a model Board Policy and Administrative Regulation 5145.13 which comply with the requirements of the law and address many of these issues. CSBA member districts will want to review the new policy for board adoption. Because of the limited time frame between now and the July 1, 2018, required adoption date, boards may need to waive the usual two readings or schedule multiple meetings in June. The new law will also impact other model policies which districts should review for adoption.³

Mandated Policies

Among other things, AB 699 enacts Education Code section 234.7 which requires the California Attorney General to consult with stakeholders and publish model policies limiting assistance with immigration enforcement at public schools to the fullest extent possible, consistent with federal and state law. The law gives the California Department of Justice and Attorney General a great deal of discretion in implementing the law. It provides that the Department of Justice may "implement,

¹ The Attorney General's guidance document entitled Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues (copy attached) contains the model policies as well as related information, a Quick Reference for School Officials, discussing what to do if an immigration enforcement officer comes to your school and seeks personal information about students, sample subpoenas, and warrants, and a Know Your Educational Rights document.

² Other laws address restrictions on immigration enforcement activity relating to employment (see AB 450).

³ See BP 0410 - Nondiscrimination in District Programs and Activities, BP 1312.3 - Uniform Complaint Procedures, AR 5111 - Admission, AB 5111.1 - District Residency, BP/AR 5125 - Student Records, AR/E 5125.1 - Release of Directory Information, and BP 5131.2 - Bullying.

interpret or make specific" the policy requirements "without taking any regulatory action," and requires districts to adopt the Attorney General's model policies "or equivalent" by July 1, 2018.⁴

The law requires the Attorney General to consider the topics listed below when developing the policies, all of which were ultimately reflected in the Attorney General's Model Policies.

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

CSBA BP 5145.13 contains a section entitled Responding to Requests for Access to Students or School Grounds with a specific process for responding to requests for access to school sites or a specific person. This calls for staff to request identification and specific information from the officer, obtain copies of any court order or warrant, and involve counsel when possible. However, the policy specifically points out that the officer should not be physically impeded, even if he/she enters the campus without consent or appears to be exceeding his/her authority.

There is a specific requirement to email the Bureau of Children's Justice regarding any attempt by a law enforcement officer to access a school site or a student for immigration enforcement purposes. While not specifically required in statute, these procedures are consistent with the Attorney General's Model Policies for Responding to On-Campus Immigration Enforcement.

The Attorney General's Quick Reference document is very similar to this section of the CSBA policy (Appendix A to the Attorney General's guidance documents), although the Quick Reference is not school-specific.

B. Notification Procedures Regarding Requests for Access.

The law requires the Attorney General to consider procedures for employees to notify the superintendent or principal or designee if an individual requests or gains access to school grounds for immigration enforcement-related purposes. The CSBA model policy and the Attorney General's model policy referred to in Paragraph A above specifically require notification to the superintendent or designee, except where exigent circumstances require immediate action.

C. Responding to Requests About Pupils or Family Members for Immigration Enforcement Purposes.

CSBA BP/AR 5145.13 sets out specific procedures addressing this topic in the section entitled Responding to Requests for Information. The procedures prohibit the release of pupil information without parent consent, a court order, or "judicial subpoena."⁵ They call for providing the student and

⁴ In reviewing the CSBA sample policy, the assumption was made that anything contained in the Attorney General's model policies will be interpreted as mandated by law due to the requirement in AB 699 that districts adopt the model policies, "or equivalent."

⁵ A provision in the CSBA model policy (first paragraph under Responding to Requests for Information) cites the Family Educational Rights Privacy Act (FERPA) for the proposition that student information cannot be disclosed to immigration law enforcement authorities without parent consent, a court order, or "judicial subpoena." Actually, the relevant FERPA provision and its California counterpart refer to a "lawfully issued subpoena" as a document that would trigger release of pupil information and do not restrict the release to only judicial subpoenas. The Attorney General takes the position that subpoenas issued by administrative agencies such as ICE do not require a release of pupil information. The policy goes on to require staff to consult with legal counsel in the case of an administrative subpoena, and if feasible where a judicial subpoena is presented.

families with a description of the request and any documents provided by the immigration enforcement officer, unless prohibited in certain circumstances.

These provisions are consistent with the Attorney General's Model Policies and Procedures Regarding Information Sharing.

Reports of Requests for Information/Site Access for Immigration Enforcement

The law requires superintendents to make a timely report to the school board of any requests for information or access to a school site by a law enforcement official for the purpose of enforcing immigration laws. The report must be made in a way that protects the confidentiality and privacy of potentially identifying information. Presumably, this could be handled via a memorandum to the board or as an agenda item for a board meeting. If the matter would require dissemination of confidential pupil information, it should be handled in closed session. CSBA BP/AR 5145.13 addresses this.

No Collection of Citizenship or Immigration Status Information

The new law prohibits districts from collecting information on immigration or citizenship status, except as required by law to administer a state or federally supported educational program. CSBA BP/AR 5145.13 reflects this.

Parents Unavailable to Care for Pupils

In a case where parents are unavailable to care for pupils (e.g., in the case of deportation or detention), the law requires districts to first exhaust parental instructions regarding the pupil's care in the emergency contact information it has on file. The law encourages schools not to contact Child Protective Services to arrange for the pupil's care unless unable to arrange for care using the emergency contact information or other parent instructions. Of course, districts should comply with any mandated reporting obligations required by law.

CSBA BP/AR 5145.13 addresses these requirements in the section entitled Responding to the Detention or Deportation of Student's Family Members. It is recommended that districts consider modifying the last sentence of the third paragraph of that section as follows:

The Superintendent or designee shall only contact child protective services if district personnel are unable to arrange for the timely care of the student by the person(s) designated in the emergency contact information maintained by the school or identified on a caregiver's authorization affidavit, or as otherwise required by law or pursuant to mandated reporting obligations.

Know Your Rights Information

The law requires that districts inform parents and guardians regarding their children's right to a free public education regardless of immigration status or religious beliefs. This must include information relating to "know your rights' immigration enforcement established by the Attorney General" (Appendix G to the Attorney General's guidance document) and can be included in the Annual Notice to Parents or through other cost-effective means. The Attorney General also released Model Policies for Annual Information Notice to Parents and Guardians with additional requirements for the annual notice to parents.

The Schools Legal Service sample Annual Notice to Parents addresses these requirements.

Discrimination and Bullying

The bill added language to the Education Code specifically prohibiting discrimination on the basis of immigration status. Districts are required to educate pupils about the negative impact of bullying other pupils based on actual or perceived immigration status or religious beliefs and customs. Districts may need to adapt anti-bullying curricula to address this and provide appropriate professional development to staff.

The Attorney General's guidance document contains Model Policies for Responding to Hate Crimes and Bullying. These issues are addressed in other CSBA policies, such as 5131.2 (Bullying).

Please contact our office if you need additional information or assistance with these issues.

— Grant Herndon

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